

DEPARTMENT OF ADMINISTRATION

CHAPTER 43

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Sub-Chapter 1

Organizational Rule

2.43.101 ORGANIZATIONAL RULE (1) The organizational rule of the public employees' retirement board is set forth in ARM 2.1.101 and is herein adopted and incorporated by this reference. (History: Sec. 2-4-201 MCA; IMP, 2-4-201 MCA; Eff. 12/31/72.)

Sub-Chapter 2

Procedural Rules

2.43.201 MODEL PROCEDURAL RULES (1) To the extent applicable to the operations of the public employees' retirement board, the board hereby adopts and incorporates by reference ARM 1.3.101 through 1.3.233, which set forth the attorney general's model procedural rules. (History: 2-4-201, 2-4-307, 19-2-403, MCA; IMP, 2-4-201, 19-2-403, MCA; Eff. 12/31/72; AMD, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2003 MAR p. 972, Eff. 5/9/03.)

2.43.202 APPLICABILITY OF RULES (1) To the extent that procedural rules adopted herein are applicable to an action taken by MPERA or the board, they will be applied. To the extent that they are not applicable, procedural rules adopted herein may be followed at the option of the board. In both cases, these rules shall have full force and effect upon the activities over which the board has responsibility and/or authority. (History: 2-4-201, 19-2-403, MCA; IMP, Sec. 2-4-201, 19-2-403, MCA; Eff. 12/31/72; AMD, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2003 p. 972, Eff. 5/9/03.)

2.43.203 REVIEW OF ADMINISTRATIVE DECISION (1) An "administrative decision" means a decision issued by the MPERA that determines an individual's or an entity's legal rights, duties, or privileges pursuant to the provisions of Title 19, MCA.

(2) Administrative decisions that are appealed to the board will be initially decided by the board on the basis of material properly submitted by MPERA and the appealing party, and such other information as the board deems appropriate. The board may, on its own motion, postpone its initial decision until the next regularly scheduled board meeting.

(3) The board will notify the appealing party of its initial decision in writing. If the decision is adverse to the appealing party, the board will include a general statement of the reasons for its decision, which need not be exhaustive. The appealing party will be given two options, either of which must be exercised within 30 days of the date of written notification:

(a) any appealing party may submit a request in writing for reconsideration by the board; or

(b) an appealing party, other than a governmental entity, may submit a request in writing for a contested case proceeding.

(4) A reconsideration by the board will be based on facts and matters submitted by the appealing party and MPERA to the board, the testimony of the appealing party before the board, and the presentation of the appealing party and MPERA, or their legal counsel, to the board.

(a) Unless otherwise ordered by the board pursuant to (4)(b), facts and matters may be submitted any time after the board's initial decision is issued until 21 days prior to the third regularly scheduled board meeting following issuance of the initial decision.

(b) The board may, prior to issuing its decision on reconsideration and on its own motion, require the appealing party, MPERA, or both to submit additional facts and matters relevant to the issue before the board. The board may also, on its own motion, postpone its decision on reconsideration. However, in no case may the board prolong issuance of its decision on reconsideration for more than six months following issuance of its initial decision.

(c) The board will notify the party in writing of its decision on reconsideration. That decision will become final and will not be subject to a contested case proceeding or judicial review unless a party other than a governmental entity files a written request for a contested case proceeding within 30 days of the written notice of decision on reconsideration.

(5) The board's initial decision or decision on reconsideration, if appropriately requested, is final with respect to a party which is a governmental entity, and may not be appealed by that entity.

(6) The board's initial decision and its decision on reconsideration will be mailed to the appealing party. The time period for requesting further review of either decision will commence on the day the notice is mailed by MPERA staff, as indicated at the bottom of the decision. Rule 6(e), M.R.Civ.P., does not apply and no additional time will be added because the decision is mailed.

(7) If a party fails to exercise an available option within the time allowed by the board, the board's decision becomes final and is not subject to contested case proceedings or judicial review. Thereafter, a party may only appear before the board on the same matter based on new and different facts that are not cumulative or repetitive, and for good cause shown.

(8) Unless otherwise provided, time periods provided herein may be enlarged only in writing by the board or its authorized representative and only on requests made prior to the expiration of the time period. (History: 19-2-403, MCA; IMP, 19-2-403, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1995 MAR p. 205, Eff. 2/10/95; AMD, 1997 MAR p. 1660, Eff. 9/23/97; AMD, 2003 MAR p. 972, Eff. 5/9/03.)

2.43.204 CONTESTED CASE PROCEDURES (1) Contested cases will be presided over and heard by a quorum of the board or a hearing examiner who may be any individual appointed by the board, including any board member.

(a) A party may seek to disqualify a hearing examiner only on the basis of a pre-hearing motion and affidavit containing an affirmative showing of prejudicial personal bias or lack of independence. The hearing examiner will rule on the motion or voluntarily recuse (disqualify) himself or herself. The ruling will not be reviewed by the board except when the personal bias or lack of independence is demonstrated by reference to the hearing examiner's proposed findings of fact, conclusions of law, and order.

(b) The hearing examiner has general authority to regulate the course of contested cases and may exercise the power and authority provided or implied by law, including 2-4-611, MCA.

(c) The hearing examiner may establish pre-hearing and hearing dates and procedures, rule on procedural matters, make proposed orders, findings and conclusions, and otherwise regulate the conduct and adjudication of contested cases as provided by law. The hearing, unless the parties stipulate otherwise, shall be conducted in the following order:

(i) the statement and evidence of the party opposing the board's initial decision or decision on reconsideration;

(ii) the statement and evidence of the MPERA; and

(iii) rebuttal testimony.

(d) The contested case hearing must be conducted in Helena. The parties and their witnesses must appear in person unless, for good cause shown, the hearing examiner determines otherwise.

(e) The hearing examiner shall enter proposed findings of fact, conclusions of law, and order, with any necessary explanation, for review and final determination by the board.

(f) The jurisdiction and authority of a hearing examiner terminates upon the entry of a proposed order unless the board delegates further authority.

(2) Exceptions to proposed findings of fact, conclusions of law, and orders that are allowed by statute must be filed with the MPERA and served upon opposing counsel within 20 days of service of the proposed findings, conclusions and order. Any response must be filed within 10 days of service of the exceptions.

(a) Briefs in support are not required, but if filed, must be filed simultaneously with exceptions or responses.

(b) Requests for oral argument must be in writing, and must be filed simultaneously with the exceptions or responses.

(c) Date of service shall be the date indicated on the appropriate certificate of service or certificate of mailing. The date of filing shall be the date of actual delivery or the postmarked date of mailing.

(d) The board may request briefing, additional briefing, or oral argument by the parties.

(3) If a quorum of the board hears the contested case, the board may use a hearing examiner for procedural rulings and administrative purposes, and to assist in the drafting of a final order. A final order so adopted will be the final administrative decision of the board, subject only to judicial review.

(4) An attorney may be assigned to present a case or to appear in any contested case to represent the interests of MPERA or the board.

(5) A contested case hearing, and any other proceeding before a hearings examiner, will be recorded electronically unless a party notifies the hearing examiner no later than 20 days prior to the proceeding that the party wants a stenographic record. The party requiring a stenographic record must arrange and pay for the court reporter.

(a) Any electronic or stenographic record shall be transcribed on the request of any party. The cost of the transcription shall initially be paid by the requesting party. A party who has a transcript prepared shall provide a copy to any other party requesting it in exchange for the proportional cost of transcribing the original and the necessary copies. A copy must also be provided to the hearing examiner, at no cost.

(b) The party(ies) filing exceptions to the hearing examiner's proposed order must file the original and a total of eight copies of the transcript with the board only if exceptions have been filed to the hearing examiner's proposed findings of fact.

(c) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing examiner may reconstruct the record or the parties may reconstruct the record by stipulation. The record so reconstructed will constitute the record for determination and review of findings of fact. (History: 19-2-403, MCA; IMP, 19-2-403, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1994 MAR p. 2711, Eff. 10/14/94; AMD, 2003 MAR p. 972, Eff. 5/9/03.)

2.43.205 REGULATIONS APPLICABLE TO CONTESTED CASES

(1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, the provisions of the Montana Administrative Procedure Act and attorney general's model rules apply. The Montana rules of civil procedure, Montana uniform district court rules or Montana rules of evidence may be utilized to the extent that they clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties or privileges of parties. (History: 19-2-403, MCA; IMP, 19-2-403, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2003 MAR p. 972, Eff. 5/9/03.)

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Sub-Chapter 3

General Rules

2.43.301 RETIREMENT SYSTEMS COVERED (1) Except where specifically noted all the rules stated herein are in effect for the following retirement systems:

- (a) public employees';
- (b) game wardens';
- (c) judges';
- (d) highway patrol;
- (e) sheriffs';
- (f) municipal police; and
- (g) firefighters' unified. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) "Benefit recipient" means any retired member, contingent annuitant, or survivor who receives a monthly benefit payment from a retirement system. It does not include a beneficiary who receives a lump-sum payment or an annuity.

(2) "Board" means the Montana public employees' retirement board.

(3) "Contested case" means a legal proceeding, as set forth in these rules, subsequent to preliminary administrative determination.

(4) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

(5) "Continuous employment" means a member serves in full-time, part-time, or seasonal employment, but does not terminate service nor withdraw the accumulated contributions from the member's account.

(6) "Employment" or "reemployment" means the performance of services for an employer by a person other than an independent contractor. If any of the four factors listed in (10) indicate control or direction by the employer, an employment relationship exists.

(7) "Filed" or "filed with the board" generally means the mailing of a form or payment in a stamped envelope which is properly addressed to the MPERA or the board. The postmark date will be used to determine the date on which filing occurs. If the form or payment is hand-delivered, it is considered filed on the day it is personally delivered to the MPERA office. If the form is faxed to MPERA or the board, it is considered filed on the day it is received in the MPERA office, provided a hard copy is received in the MPERA office within five working days of the filing date. A form can not be filed by e-mail as a signature is required.

(8) "Full-time employment" for service credit, means an employer or employers paid the member for at least 160 hours during a calendar month. A member may not receive more than one month credit for months in which the member receives pay for more than 160 hours.

(9) "Full-time public service employment" means full time employment which when it was performed was not covered by a system referred to in 19-2-302, MCA, and may not otherwise be credited in a retirement system.

(10) "Independent contractor" means an individual who renders service in the course of an occupation and is both:

(a) engaged in an independent trade, occupation, profession or business; and

(b) under contract and in fact, at all times free from control or direction over the performance of the services.

(i) The MPERA may consider but is not limited to the following factors when determining freedom from control and direction:

(A) right or exercise of control of the means by which the work is accomplished;

(B) method of payment (time basis indicates employment);

(C) furnishing of equipment; and

(D) employer's right to fire.

(ii) Independent contractor status may only be established by a convincing accumulation of these factors indicating freedom from control or direction over performance of the services.

(11) "MPERA" means the Montana public employee retirement administration.

(12) "Part-time employment" for service credit, means an employer or employers paid a member for less than 160 hours during a calendar month.

(13) "PERS" means the public employees' retirement system.

(14) "Primary beneficiary" means a beneficiary designated to receive payments upon the death of a member. Primary beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

(15) "Seasonal employment" means employment within a calendar or fiscal year which is less than 6 months duration. Seasonal employment occurs on an on going basis during the same months in succeeding years.

(16) "Service years" or "years of service" means periods of 12 calendar months of membership service which qualify members for retirement or other benefits.

(17) "Survivor" means the designated or statutory beneficiary of a member who dies while in service. (History: 19-2-403, MCA; IMP, Title 19, Ch. 2, 3, 5, 6, 7, 8, 9, and 13, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1987 MAR p. 1338, Eff. 8/14/87; AMD, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1993 MAR p. 2762, Eff. 11/25/93; AMD, 1994 MAR p. 291, Eff. 2/11/94; AMD, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1998 MAR p. 920, Eff. 4/17/98; AMD, 2001 MAR p. 1834, Eff. 9/21/01.)

2.43.303 REQUEST FOR RELEASE OF INFORMATION BY MEMBERS

(1) Telephone requests from system members or benefit recipients for general information will be handled in a manner most efficient to both the member or benefit recipient and the division, subject to written verification.

(2) Specific information, particular to a member or benefit recipient's account, will only be released upon receipt by the division of a written authorization signed by the member or benefit recipient.

(3) The administrator may release information to governmental agencies with statutory authority to access specific information. The requesting agency must submit the request in writing citing proper legal authority to obtain the specific information. (History: Sec. 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Title 19, Ch. 2, 3, 5, 6, 7, 8, 9, and 13 MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1994 MAR p. 291, Eff. 2/11/94.)

2.43.304 ACTUARIAL RATES AND ASSUMPTIONS

(1) The actuary will present the actuarial data and recommend the board adopt specific rates and assumptions. The board in its discretion will adopt rates and assumptions and publish them in a board policy.

(2) The division shall maintain a historical file of all rates or assumptions, including the current version. The file shall be open and readily available to the public.

(3) This rule includes at least the following actuarial rates and assumptions:

- (a) investment earnings assumption;
- (b) salary increase assumptions;
- (c) required contribution rates;
- (d) asset valuation assumption;
- (e) administrative expense assumption;
- (f) mortality rates;
- (g) disability rates;
- (h) retirement rates;
- (i) withdrawal rates; and
- (j) service purchase rates.

(4) The board will provide effective dates when adopting the rates and assumptions. (History: Sec. 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202 MCA; IMP, Sec. 19-3-305, 19-5-201, 19-6-202, 19-7-201, 19-8-202, 19-9-504, 19-13-504, 19-17-107 MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1998 MAR p. 920, Eff. 4/17/98.)

2.43.305 MAILING INFORMATION ABOUT NON-PROFIT ORGANIZATIONS (IS HEREBY REPEALED) (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1994 MAR p. 2515, Eff. 9/9/94; REP, 1994 MAR p. 3181, Eff. 12/23/94.)

2.43.306 DOCUMENTS ACCEPTABLE FOR MAILING -- NON-PROFIT ORGANIZATIONS (IS HEREBY REPEALED) (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1994 MAR p. 2515, Eff. 9/9/94; REP, 1994 MAR p. 3181, Eff. 12/23/94.)

2.43.307 BENEFIT RECIPIENTS' RIGHTS TO BE EXCLUDED FROM MAILINGS OF INFORMATIONAL MATERIALS ABOUT NON-PROFIT ORGANIZATIONS (IS HEREBY REPEALED) (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1994 MAR p. 2515, Eff. 9/9/94; REP, 1994 MAR p. 3181, Eff. 12/23/94.)

2.43.308 MAILING FOR NON-PROFIT GROUPS (1) The division may mail materials to retirees for eligible non-profit retiree groups. The division may send the materials to retirees, or to members requesting estimates of their retirement benefits. The information may also be sent to system participants as a part of or in addition to regular newsletters.

(2) Eligible non-profit groups are limited to groups formed for participants of board-administered retirement systems. The group must be tax exempt under section 501(c)(4) of the Internal Revenue Code. It must also hold a non-profit mailing permit from the U.S. postal service in Helena, Montana.

(3) The division will provide application forms. A non-profit group must submit an application to the division at least one month before any mailing. An application packet must contain:

(a) an application form signed by an officer of the non-profit group;

(b) a copy of the IRS letter exempting the group under section 501(c)(4) of the tax code;

(c) a copy of the certificate of incorporation as a non-profit entity in Montana;

(d) if requesting bulk mailing, a copy of the group's current U.S. postal mailing permit; and

(e) an exact copy of the materials to be mailed.

(4) Upon approval, the division will bill the organization for the estimated cost of the mailing. For bulk mailing, the division will provide a proposed completion date. The organization must pay the total estimated cost at least 10 working days before the mailing.

(5) When the mailing is complete, the division will bill the organization for any additional cost. For mail inserted with estimates, the division will send the group a bill each month. All charges must be paid within 30 days of billing. Thereafter, the division will charge the greater of interest at 9% compounded monthly from the billing date or \$10 per day. (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1995 MAR p. 1318, Eff. 7/14/95; AMD, 1998 MAR p. 920, Eff. 4/17/98.)

2.43.309 ACCEPTABLE MATERIALS -- NON-PROFIT MAILING

(1) The division will mail materials which conform to the following criteria:

(a) the packet of materials mailed to each person must be identical;

(b) each packet may include an application for membership in the non-profit group and general information about the group's activities. No piece may urge or recommend actions not within the non-profit nature and scope of the group. For example, a group may not urge voting for a particular individual or joining another or affiliated group.

(2) Each piece inserted with retirement estimates must be one single page, no larger than 8½ inches by 17 inches, folded to fit within a regular business envelope. It may not be stapled or sealed in any manner.

(3) Each packet for bulk mailing must meet current postal requirements and must be printed with the group's non-profit mailing permit. (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1995 MAR p. 1318, Eff. 7/14/95; AMD, 1998 MAR p. 920, Eff. 4/17/98.)

2.43.310 RIGHT TO BE EXCLUDED -- NON-PROFIT ORGANIZATIONS

(1) Any member or other person receiving benefits from a retirement system may request to be excluded from receiving a mailing on behalf of all non-profit organizations by submitting a written request to the division.

(2) Requests for exclusion will become effective no later than 30 days after the division receives the signed written request. (History: Sec. 19-2-403 MCA; IMP, Sec. 2-6-109 MCA; NEW, 1995 MAR p. 1318, Eff. 7/14/95.)

Sub-Chapter 4

Membership and Service Credits

2.43.401 AUTHORITY TO CONTRACT (REPEALED) (History: 19-3-304, MCA; IMP, Title 19, Ch. 3, part 2, MCA; Eff. 12/31/72; REP, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.402 MEMBERSHIP CARDS (1) Each contributing employee must complete a membership card upon employment, name change or change of beneficiary, and this card must be forwarded by the employing agency to the retirement division.

(2) No benefit will be processed, or refund of contributions made, unless the division has a completed membership card on file. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-401, 19-5-602, 19-6-602, 19-7-602, 19-8-702, 19-9-912, 19-13-903, MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.403 OPTIONAL MEMBERSHIP (1) Employees for which membership in a retirement system is optional may become members by completing an application form provided by the board. The application form must be filed with the board within 180 days of commencement of the employment for which membership is optional, or within 180 days of the effective date of the statute permitting optional membership, whichever is later. Except as provided in (2), once elected, members may not discontinue membership without termination of employment.

(2) The board may permit an employee to discontinue optional membership if the employee submits proof that the employee was not informed membership was optional. The employee must submit such proof within 180 days of the employee's first day of employment, or within 180 days of the filing of the application form, whichever is later.

(3) Membership discontinued pursuant to (2) must be treated as a reporting error. The board shall issue a credit for all contributions, plus interest, to the employer. The employer will be responsible for refunding appropriate contributions to the employee. (History: 19-2-403, MCA; IMP, 19-2-903, 19-3-412, 19-13-301, MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1994 MAR p. 291, Eff. 2/11/94; AMD, 1999 MAR p. 1504, Eff. 7/2/99; AMD, 2001 MAR p. 1834, Eff. 9/21/01.)

2.43.404 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall submit required employer reports, other than working retiree reports required by ARM 2.43.506, no later than five working days after each regularly occurring payday. Each report must be accompanied by statutorily required employer and employee contributions to the retirement system.

(a) Beginning July 1, 2003, reporting agencies shall use the MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH).

(b) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by the MPERA, and must be accompanied by the payment.

(2) The report must be in alphabetical order by last name and contain for each employee, including any state or local elected official who is an active member of PERS:

(a) social security number;

(b) last and first name;

(c) salary;

(d) regular contributions;

(e) additional contributions if any;

(f) the actual hours for which the employee received compensation; and

(g) each employee who terminated during the pay period being reported.

(3) Reporting agencies of the Montana university system (MUS) shall report employees in PERS covered positions who elect the MUS optional retirement program (ORP). The MUS ORP report must include all information required in (2). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for those employees.

(4) Reporting errors affecting defined benefit plan members may be corrected on subsequent pay period reports via a letter of explanation that must include all salary and service documentation for the reported error and the affected time period. The MPERA will then notify the reporting agency of the necessary action, including contributions and interest due.

(5) Reporting errors affecting PERS members who elect the PERS defined contribution retirement plan (DCRP) will be corrected as follows:

(a) Corrections increasing a contribution will be credited to the participant's individual account within the timeframe established in ARM 2.43.1031 and will not be retroactive.

(b) Corrections reducing a contribution will decrease the participant's individual account.

(i) The DCRP recordkeeper will recover the incorrect contribution from the participant's individual account and submit a refund to the MPERA.

(ii) The MPERA will submit the refund to the reporting agency.

(iii) It is the reporting agency's responsibility to correct payroll records and submit the refund to the DCRP participant.

(6) Corrections reducing an employee's contribution cannot be accepted if the employee has received a refund. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2104, 19-7-1101, MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2003 MAR p. 1186, Eff. 6/13/03; AMD, 2003 MAR p. 1981, Eff. 9/12/03.)

2.43.405 MEMBERSHIP (1) An eligible employee becomes a member of a retirement system on his first day of covered employment under that system.

(2) A member of PERS or sheriffs' retirement system who elects to requalify previously refunded service in his current system shall have, as his first day of membership, the first day of his requalified service.

(3) A member of the police or firefighters' unified retirement systems shall not have his first day of membership changed by any election to requalify previously refunded service.

(4) A member of a retirement system will not affect his first day of membership service because of any voluntary election to transfer service credits into this system from another system or to qualify any other full-time public service employment or military service. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, part 4 and 5, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4 and 6, Ch. 13, part 3 and 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.406 BASIC PERIOD OF SERVICE (1) The month is the basic period for the awarding of service credit and membership service for all retirement systems.

(a) Except as otherwise specified by rule or statute, 160 hours of service credit will equal one month of service credit, regardless of the calendar period during which the service credit was earned.

(b) Except as otherwise specified by rule or statute, 12 months of service credit will equal one year of service credit, regardless of the calendar period during which the service credit was earned.

(c) Service credit granted for any fiscal year may not be greater than one year.

(2) Service credit of less than 160 hours in a calendar month constitutes part-time service.

(3) If only compensation for full-time covered employment is used to calculate "final average compensation" or "highest average compensation" and if the member has both full- and part-time service, then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by 160 hours, but may not be greater than one.

(4) If only compensation for part-time covered employment is used to calculate "final average compensation" or "highest average compensation" and if the member has both full- and part-time service, then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the "final average compensation" or "highest average compensation" time period, but may not be greater than one.

(5) If compensation for both part-time and full-time covered employment is used to calculate the "final average compensation" or "highest average compensation", then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the "final average compensation" or "highest average compensation" period, but may not be greater than one. (History: 19-2-403, MCA; IMP, 19-2-701, 19-3-904, 19-5-502, 19-6-502, 19-7-503, 19-8-603, 19-9-804, 19-13-704, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2001 MAR p. 2219, Eff. 11/9/01.)

2.43.407 NO DUPLICATION OF CREDITS (1) A member employed in more than one covered job during any given month may not earn more than one month service credit in a covered retirement system.

(2) A member may not qualify the same period of military or public service employment in more than one retirement system.

(3) A member may not requalify credit from another retirement system, or qualify any period of military or public service employment, for any calendar month for which full service credit has already been granted. (History: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-508, 19-6-302, 19-7-307, 19-8-305, 19-9-401, 19-13-401, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.408 CALCULATION OF SERVICE CREDIT ON TERMINATION OF EMPLOYMENT (1) A member terminating employment shall not be granted service credit for lump sum payments of severance pay, including vacation, sick, or compensatory leave.

(2) A member who receives compensation in a month after termination of employment may elect to receive appropriate service credit for that month. No member can receive both service credit and a retirement benefit for the same month. (History: 19-2-403, MCA; IMP, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1994 MAR p. 291, Eff. 2/11/94; AMD, 2001 MAR p. 1834, Eff. 9/30/01.)

2.43.409 IMPROPER CREDIT (1) If the board finds that membership service was credited in error, it will cancel the service. The board will refund the accumulated contributions for the service to the member.

(2) If the service was transferred between retirement systems, the board will return the employer contributions to the original system. (History: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-2-903, 19-3-1403, 19-5-703, 19-6-704, 19-7-704, 19-8-804, 19-9-1003, 19-13-1002, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.410 PROOF OF SERVICE (1) When hours of employment are required for granting service credits, the board will utilize the employer certified records of employment to calculate and grant service credits to members.

(2) If, for any reason, employer records are missing or alleged to be inaccurate, it shall be the member's responsibility to provide acceptable documentation to the board which proves the amount of service time and salary paid to the member by the employer during the period in question.

(3) If the board grants a petition for correction of employer records, additional service time will be granted only after payment of required contributions, plus interest, into the retirement system by the member. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.411 NATIONAL GUARD MEMBERSHIP -- APPLICATION
(REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-402, MCA; NEW, 1979 MAR p. 4, Eff. 1/12/79; AMD, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.412 NATIONAL GUARD MEMBERSHIP -- CREDITABLE SERVICE
(REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-402, Title 19, Ch. 3, part 5, MCA; NEW, 1979 MAR p. 4, Eff. 1/12/79; AMD, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.413 NATIONAL GUARD MEMBERSHIP -- PRIOR CREDITABLE SERVICE (REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-402, Title 19, Ch. 3, part 5, MCA; NEW, 1979 MAR p. 4, Eff. 1/12/79; AMD, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.414 NATIONAL GUARD MEMBERSHIP -- REPORTING
(REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-402, MCA; NEW, 1979 MAR p. 4, Eff. 1/12/79; AMD, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.415 NATIONAL GUARD MEMBERSHIP -- TERMINATION AND RETIREMENT (REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-402, 19-3-406, 19-3-703, 19-3-901, MCA; NEW, 1979 MAR p. 4, Eff. 1/12/79; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.416 SCHOOL TERM AS SERVICE YEAR (REPEALED) (History: 19-3-304, MCA; IMP, 19-3-401(3), MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.417 SEASONAL EMPLOYEES (REPEALED) (History: 19-3-304, MCA; IMP, 19-3-401, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.418 ELECTED OFFICIALS (1) Any elected official, other than a legislator, who becomes a member of PERS pursuant to 19-3-412, MCA, will receive service credit based upon the number of the member's compensated hours. Per diem or other benefits are not compensation.

(2) Legislators may elect membership in PERS.

(a) The legislator's application to join or to decline PERS membership must be filed with the board within 180 days of the first day of the legislator's term of office.

(i) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new 180-day election window.

(ii) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new 180-day election window.

(b) A legislator may also exercise options available under 5-2-304 and 19-3-412, MCA.

(c) A legislator who becomes a member of PERS must pay regular contributions on all compensation for service in office.

(i) The legislator must pay contributions through payroll deduction during a legislative session.

(ii) The legislator may pay contributions directly to MPERA when the legislature is not in session.

(d) The total contribution required for the term will be based on the current statutory salary prescribed in 5-2-301, MCA, less any previous contributions. The legislator must make all payments to MPERA no later than the last day of the legislator's final term in that office.

(e) Service credit and membership service will be granted pursuant to 19-3-521, MCA.

(3) A retired PERS member who is elected to a state or local government public office covered by PERS may elect to become an active member of PERS or remain a retired member, with no limitation on the number of hours worked in the elected position.

(4) An active PERS member who is elected to a local government public office and works less than 960 hours a year in the elected position may decline membership in PERS with respect to the elected position.

(5) A member appointed to fill an unexpired term has the same rights and privileges as an elected official.

(6) An elected official whose term ends prior to the 15th of a month will be considered to have terminated covered employment effective the last day of the month preceding the end of the term.

(7) A member who elects to purchase previous service as an elected official in the PERS must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993. (History: 19-2-403, MCA; IMP, 19-2-701, 19-2-702, 19-3-412, 19-3-1106, 19-5-301, 19-7-301, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1993 MAR p. 1199, Eff. 7/1/93; AMD, 1995 MAR p. 1319, Eff. 7/14/95; AMD, 1999 MAR p. 1504, Eff. 7/2/99, AMD, 2003 MAR p. 1981, Eff. 9/12/03.)

2.43.419 JOB SHARING (REPEALED) (History: 19-2-403, 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.420 REQUALIFICATION OF SERVICE (1) At any time prior to retirement, a member who is statutorily eligible to do so, may elect to qualify into his current retirement system all or any portion of his previously refunded credits in his current or another state retirement system.

(2) The foregoing shall not be construed to allow the transfer or purchase of credits between two retirement systems while the individual is a member of both systems, nor shall it allow the transfer or purchase of service into a system by a former member of that system.

(3) In order to qualify the previously refunded service, an eligible member must initiate the action through the system to which he currently contributes, identifying, in writing, the system and the period of employment which is to be requalified.

(4) The division will review refund information in its files, or submitted to it by the teachers' retirement system, and will notify the member the exact amount of time which can be requalified and the amount of employee contributions, plus interest, which must be deposited by the member in order to "buy back" the previously refunded service time.

(5) The member must have a letter of intent on file with the board for the buy back of previously refunded service credits, stating the amount of service credit to be requalified, the cost of the "buy back," and the amount of time over which the member will pay for such service.

(6) After full payment is made by the member, and if the service credit to be requalified was originally granted in a system other than the current system, the board will transfer from the previous system into the current system the actuarial equivalent of the employer's/state's share of granting such service credit in the current system. (History: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-509, 19-3-511, 19-3-605, 19-6-305, 19-7-309, 19-8-306, 19-9-405, 19-9-603, 19-13-404, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.421 CREDIT FOR SERVICE IN THE UNIFORMED SERVICES

(1) If an actively employed member of the public employees', judges', highway patrol, sheriffs', game wardens' and peace officers', municipal police, or firefighters' unified retirement systems is called to duty for a period or periods of service in the uniformed services, the member may receive service credit and membership service within the member's retirement system for that time, provided the member:

(a) remains a member of the retirement system during the period of service in the uniformed services by leaving his or her accumulated contributions on deposit;

(b) complies with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994, commonly known as USERRA; and

(c) is reemployed pursuant to USERRA.

(2) The member must make up the member's contributions for the uniformed services related absence within three times the period of the member's uniformed service starting upon return to employment, but not to exceed five years.

(3) The member may make up the employee contributions:

(a) on a pre-tax basis pursuant to 19-2-704, MCA;

(b) in a lump sum, including a direct transfer from an eligible retirement plan or individual retirement account; or

(c) through installments on a post-tax basis.

(4) If the member makes up the employee's contributions, the member's employer must make up the employer's contributions within the same time frame.

(5) The member's and the employer's contributions are determined based on the compensation the member would have received had the member not been called to uniformed services duty.

(6) Neither the member nor the employer is charged interest on their respective contributions.

(7) A member who is making additional contributions under a service purchase contract at the time he or she is called to service in the uniformed services may suspend payments under the contract until return to employment as required under USERRA.

(8) For purposes of this rule, service in the uniformed services is any service covered by USERRA, including:

(a) service in the army, navy, marine corps, air force, coast guard, or public health service commissioned corps;

(b) service in the reserve components of each of the services listed in (8)(a); and

(c) training or service in the army national guard or the air national guard.

(9) For purposes of this rule, service includes:

- (a) active duty;
- (b) active duty for training;
- (c) inactive duty for training;
- (d) initial active duty training; and
- (e) any period of time during which a member is absent from employment for the purpose of an examination to determine fitness to perform any of the above-listed duties. (History: 19-3-403, MCA; IMP, 19-2-707, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2004 MAR p. 561, Eff. 3/12/04.)

2.43.422 MOST RECENT SERVICE PURCHASED FIRST (1) When purchasing only a portion of a member's eligible military, federal volunteer, refunded, or other full-time public service, the member must first purchase the most recent service.

(2) When purchasing or transferring a portion of a member's service credit from another retirement system, the member must first purchase the most recent service. (History: 19-2-403, MCA; IMP, 19-2-715, 19-3-503, 19-3-504, 19-3-505, 19-3-510, 19-3-512, 19-3-513, 19-3-515, 19-5-409, 19-6-801, 19-6-803, 19-6-804, 19-6-810, 19-7-803, 19-7-804, 19-7-810, 19-8-901, 19-8-903, 19-8-904, 19-8-905, 19-9-403, 19-9-411, 19-13-403, and 19-13-405, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1982, Eff. 9/12/03.)

2.43.423 PURCHASE OF OTHER TYPES OF SERVICE (1) When military, U.S. government, federal volunteer, full-time Montana public employment, or other service is eligible to be purchased into a retirement system, the member is responsible for providing acceptable documentation to the board.

(2) The documents submitted by the member must be sufficient to prove to the board that the service is eligible to be purchased by the member.

(a) Documents used to prove military or federal volunteer service shall include:

(i) military service records verified by the appropriate branch of service;

(ii) peace corps service records verified by the appropriate federal service agency; or

(iii) national service position records verified by the corporation for national and community service.

(b) Documents used to prove U.S. government or Montana public employment shall include employer certification of the service and the compensation received.

(i) If employer-certified salary and employment documentation is not available from the employer, or if the member contests the certified documents, the member may petition the board to purchase the service based upon acceptable documentation listed in ARM 2.43.428.

(2) The board shall review the documents presented to determine whether the service qualifies.

(3) The MPERA will calculate the cost of purchasing military, federal volunteer service, or other full-time public service employment into the member's current system.

(4) The eligible member must have a letter of intent on file with the board to purchase all, or a specific portion of the service, into the member's account. The letter of intent must state whether payment for the service will be made in a lump sum or in installment payments. Installment payments will be subject to additional interest as determined by the board and computed over the payment period (History: 19-2-403, MCA; IMP, 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, 19-6-801, 19-6-803, 19-7-803, 19-8-901, 19-8-903, 19-9-403, and 19-13-403, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 2003 MAR p. 1982, Eff. 9/12/03.)

2.43.424 SERVICE CREDIT FOR PERIOD(S) OF DISABILITY

(1) A member of the PERS whose absence from service is compensated by workers' compensation, and who elects to leave his accumulated contributions on deposit with the retirement system during that absence, may elect to qualify up to five years of the period of absence for service credits within 12 months of reinstatement to his position.

(2) In order to be eligible to qualify such a period of absence, a workers' compensation determination that the illness or injury was job-related must be made no later than one year after the member returns to his covered position.

(3) The member must file written application to qualify such service time with the board along with documentation of the period of time he was in receipt of workers' compensation benefits.

(4) The division will calculate the amount of contributions due based upon the amount the member would have normally received as salary had he not been absent from service using the member and employer contribution rates in effect during that period of time.

(5) Employee contributions, plus interest accruing from one year after the date the member returns to service, may be made in one lump sum or on an installment basis.

(6) The employer will be responsible for paying to the system the employer share of the contributions due, but may elect not to pay the accrued interest, if any, which is due, in which case the member must pay any interest due.

(7) No service credit will be granted to the member until the total contributions due are deposited into the system. (History: 19-3-304, MCA; IMP, 19-3-504, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.425 INCOMPLETE PAYMENTS (1) The board will refund the additional contributions and interest to a non-vested member who terminates employment before completing a service purchase. The member will not receive any additional service credit.

(2) If a member dies or retires with a disability before completing a service purchase, the member, or anyone acting on the member's behalf, may complete those payments. The payments must be completed before the board will pay any benefits. The board will prorate the member's service based on payments already made, if no further payments will be made.

(3) A PERS member must either complete or terminate the member's purchase of service pursuant to ARM 2.43.1015 before MPERA will confirm the member's election to the defined contribution retirement plan or the Montana university system's optional retirement program. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-602, 19-2-704, Title 19, Ch. 3, part 5, 19-3-2115, 19-5-409, Title 19, Ch. 6, part 8, Ch. 7, part 8, Ch. 8, part 9, Ch. 9, part 4, Ch. 13, part 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 1999 MAR p. 1504, Eff. 7/2/99; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.426 PART-PAID FIREFIGHTERS' SERVICE (1) Service credits earned by part-paid firefighters prior to July 1, 1981, will be computed and granted on the basis of the ratio of salary earned by the part-paid firefighter to the salary paid to a newly confirmed full-paid firefighter during the same time period.

(2) Service credits earned on or after July 1, 1981, shall be granted under the assumption that all part-paid firefighters work 15% time. Employer and part-paid employee contributions to the firefighters unified retirement system will be based on an assumed salary for part-paid firefighters which is 15% of a newly confirmed full-paid firefighter's salary for the same time period.

(3) A part-paid firefighter will accrue a service credit of one month for each calendar month during which contributions are made; however, if and when such part-paid service is qualified into another system, or if such part-paid firefighter also has full-paid firefighter service credits, each calendar month of part-paid service shall be credited as only .15 month of service. (History: 19-13-202, MCA; IMP, Title 19, Ch. 13, part 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.427 REINSTATEMENT -- CREDIT FOR LOST TIME (1) A member whose service is involuntarily terminated and is later reinstated as the result of a suit, court order, appeal or out-of-court settlement, to which the board is a party, may petition the board for service years and credits to be granted for the period of time lost provided the member is awarded retroactive compensation in settlement of his claim. Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

(2) The board will review among all relevant considerations, documentation provided by the member and will determine the appropriateness of granting service credits and membership service, and the amount of employee and employer contributions which must be paid to the retirement fund based upon the compensation awarded under (1) above and will credit proportional service time to the member after all required contributions, including interest, have been paid. (History: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, part 3, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1997 MAR p. 1660, Eff. 9/23/97.)

2.43.428 ACCEPTABLE DOCUMENTATION OF PUBLIC SERVICE EMPLOYMENT (1) For the purposes of documenting and purchasing public service employment when there is no employer-certified salary and employment documentation available or when certified documents are alleged to be in error, the board will consider other documents, including but not limited to:

- (a) weekly/bi-weekly, or monthly pay stubs;
- (b) copies of logs, time sheets or other documents required to be kept by the employee for the employer;
- (c) union agreement(s) in effect for time period in question;
- (d) any other binding agreement or contract in effect at that time;
- (e) certified copy of a court order or out-of-court settlement agreement; and/or
- (f) other notarized or official documents which would support the member's claim. (History: 19-2-403, MCA; IMP, 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, 19-6-801, 19-6-803, 19-7-803, 19-8-901, 19-8-903, 19-9-403, and 19-13-403, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1982, Eff. 9/12/03.)

2.43.429 FULL SALARY CREDIT FOR TEMPORARY WORK REDUCTIONS

(1) A retiring member whose final average salary calculation is adversely affected because of a temporary work reduction as defined in statute may file a written application for full salary credit with the board. Such application shall include:

(a) certification from the member's employing agency that the reduction in hours was a temporary measure in response to a budget deficit, and

(b) the employer's accounting of the number of hours, pay periods and hourly salary involved in the work reduction.

(2) The division will calculate the employee and employer contributions due, plus regular interest accruing one month from the end of any pay period of foregone salary, based upon the amount of salary foregone and the employer and employee contribution rates in effect at that time.

(3) The employee will be billed for the employee portion and may make payment in one lump sum or on an installment basis.

(4) Upon payment by the employee, the division will bill the employing agency for the employer share, plus interest. The employer may elect not to pay any interest due, in which case the employee will be billed for this amount.

(5) Upon payment of the total amount due, the division shall add the foregone salary to the monthly payroll reports in the member's file and shall use these new salary totals in the calculation of final average salary for purposes of calculating monthly retirement benefits.

(6) No benefits will be paid until all required payments are made into the employee's account; however, the annuity starting date will be the first day of the month after the employee's last day of membership service. (History: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-308, 19-6-204, 19-7-203, 19-8-204, 19-9-204, 19-13-205, MCA; NEW, 1987 MAR p. 1338, Eff. 8/14/87.)

2.43.430 OUT-OF-STATE OR FEDERAL PUBLIC SERVICE (1) A member of the PERS, game wardens' and peace officers' retirement system, or highway patrol officers' retirement system may request to purchase out-of-state or federal public service by writing a letter to the board. The letter must contain the following information certified by the member's former employer:

(a) dates of employment, full- or part-time employment status, weekly or monthly hours of employment if part-time, date and amount of refund, and current membership status; or

(b) if the member was employed before the employer adopted a public retirement system, the information in (1)(a) and, if applicable, the name of the public retirement system and the date the employer adopted it.

(2) The board will calculate the actuarial cost of granting the service based upon the member's preceding 12 month's salary. (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-512, 19-6-803, 19-8-903, MCA; NEW, 1987 MAR p. 1338, Eff. 8/14/87; AMD, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.431 SHERIFF'S MILITARY BUY-BACK (REPEALED) (History: 19-7-201, MCA; IMP, 19-7-310, MCA; NEW, 1987 MAR p. 1338, Eff. 8/14/87; AMD, 1990 MAR p. 994A, Eff. 7/1/90; REP, 1992 MAR p. 466, Eff. 5/29/92.)

2.43.432 "1-FOR-5" ADDITIONAL SERVICE (1) Subject to the requirements of each retirement system, a member with five or more years of membership service may purchase additional service credit. Members may purchase one full year of additional service for each five full years of membership service credited in the retirement system. A member eligible to purchase additional service may purchase full months of service totaling 11 months or less.

(2) The cost will equal the actuarial rate for the respective system times the member's compensation for the immediately preceding 12 months. Each full month of additional service will cost 1/12 the cost of a full year.

(3) The board will include a member's additional service when calculating the amount of a benefit, but not for initial retirement eligibility or for early retirement, except in the following cases:

(a) PERS, which requires additional service to be included when calculating the early retirement reduction; and

(b) the sheriffs' retirement system, which requires additional service to be credited for the purpose of meeting retirement eligibility.

(4) A retired member who returns to active PERS membership may purchase additional service after at least 12 months of active service. The amount of additional service which may be purchased will be based on the member's total membership service in PERS. (History: 19-2-403, 19-3-304, 19-7-201, MCA; IMP, 19-3-513, 19-5-409, 19-6-804, 19-7-311, 19-7-804, 19-8-904, 19-9-411, 19-13-405, MCA; NEW, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1991 MAR p. 510, Eff. 4/26/91; AMD, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 1995 MAR p. 1033, Eff. 6/16/95; AMD, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.433 PURCHASE OF FULL-TIME SERVICE BY PART-TIME MEMBERS (1) When a member employed on a part-time basis is eligible to purchase periods of full-time service, the compensation used to calculate the cost to purchase such full-time service will be the actual part-time compensation earned.

(2) If the member later retires with a full-time FAS, the full-time service purchased under (1) will be proportionally reduced based upon the proportion of time worked when the service was purchased.

(3) A member whose service is reduced under (2) above may elect to purchase service to equal full-time by paying the difference between the cost actually paid and the cost had the member's salary been full-time, plus interest. (History: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, 6, 7, 8, 9, 13, MCA; NEW, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.434 SERVICE CREDITS FOR PERIODS OF COMPENSATED EDUCATIONAL LEAVE (REPEALED) (History: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, 6, 7, 8, 9, 13, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.435 PURCHASE OF RETROACTIVE SERVICE BY FEE BASIS OFFICIALS (REPEALED) (History: 19-3-304, 19-6-201, 19-7-201, MCA; IMP, Title 19, Ch. 3, 6, 7, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.436 PURCHASE OF PREVIOUS MILITARY SERVICE--MODIFICATIONS AFFECTING ACTUARIAL COST (REPEALED) (History: 19-2-403, 19-7-201, 19-9-201, 19-13-202, MCA; IMP, 19-7-301, 19-7-803, 19-9-403, 19-13-403, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 1994 MAR p. 291, Eff. 2/11/94; REP, 2004 MAR p. 563, Eff. 3/12/04.)

2.43.437 MILITARY SERVICE (1) Members who meet the requirements of their retirement systems may purchase active and reserve military service. The cost will equal the actuarial rate for the respective system times the member's compensation for the immediately preceding 12 months. Each full month of additional service will cost 1/12 the cost of a full year.

(2) Highway patrol officers who did not elect GABA will pay a different cost for military service, whether active or reserve. The cost will equal the contributions for the year of service the member must complete to purchase the year of military service. For example, a member purchasing the first year of military service would pay an amount equal to the contributions for the member's 16th year of service. To purchase the 2nd, 3rd, and 4th years, the member would pay an amount equal to the contributions for the 17th, 18th, and 19th years of service, respectively. The member must also pay interest forward from the date the member is eligible to purchase the service to when payment is complete. The interest is the rate set by the board for member accounts.

(3) The following requirements pertain to the purchase of membership service and service credit for the member's reserve military service in the armed forces, including the army national guard and the air national guard:

(a) The time spent in reserve military service must be confirmed on appropriate documentation from the proper branch of the armed forces.

(b) The member may not purchase any more reserve military service for a one year period than the amount of reserve military service that, when combined with all other earned or purchased service for that one year period, does not exceed one year of service credit. The reserve military service cannot be purchased if the member has received service credit for the same time period.

(c) The member may purchase reserve military service even if that period of service may be, or is, used to determine the member's right to, or amount of, military service retired pay under federal law, as provided by Title 10, chapter 1223 of the United States Code.

(d) The member may purchase reserve military time prior to separation from service in the reserves. (History: 19-2-403, MCA; IMP, 19-3-503, 19-5-410, 19-6-801, 19-7-803, 19-8-901, 19-9-403, 19-13-403, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 1999 MAR p. 1504, Eff. 7/2/99; AMD, 2000 MAR p. 70, Eff. 1/14/00; AMD, 2004 MAR p. 563, Eff. 3/12/04.)

2.43.438 HIGHWAY PATROL OFFICERS' OUT-OF-STATE LAW ENFORCEMENT SERVICE (REPEALED) (History: 19-6-201, MCA; IMP, 19-6-306, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.439 ELECTION BY LOCAL GOVERNMENTS TO BE SUBJECT TO THE RETIREMENT INCENTIVE PROGRAM (REPEALED) (History: 19-2-403, 19-3-908, MCA; IMP, 19-3-908, MCA; NEW, 1993 MAR p. 2008, Eff. 8/27/93; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.440 SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) An inactive vested member may purchase any additional service for which the member is eligible any time prior to retirement. The appropriate statutes and rules will be followed to calculate the cost to purchase the service except the inactive member's last termination date will be considered the purchase request date. Interest at an effective annual rate of 8% per year, compounded monthly, will be charged from when the member last terminated to when the member completes payment for the cost of the purchase. (History: 19-2-403, MCA; IMP, 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA; NEW, 1995 MAR p. 2386, Eff. 11/10/95.)

2.43.441 PURCHASE OF SERVICE THROUGH DIRECT TRUSTEE-TO-TRUSTEE TRANSFER OF FUNDS (1) At any time prior to retirement, a member who is statutorily eligible to do so, may purchase service in the member's current retirement system through a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-704, 19-3-2115, MCA; NEW, 2002 MAR p. 1889, Eff. 7/12/02; AMD, 2003 MAR p. 1800, Eff. 8/15/03.)

2.43.442 ELIGIBLE FEDERAL VOLUNTEER SERVICE (1) Federal volunteer service eligible to be purchased into a member's PERS account is limited to:

(a) any documented period of service in the peace corps; and

(b) any documented, successfully completed required term of service in the following National and Community Service Act (NCSA) programs:

- (i) americorps vista;
- (ii) americorps national community conservation corps; or
- (iii) any other NCSA program that requires the volunteer to enroll for a specific term of service.

(2) Federal volunteer service eligible to be purchased into a member's PERS account does not include NCSA programs such as:

- (a) freedomcorps;
- (b) seniorcorps;
- (c) learn and serve America; or
- (d) any other NCSA program for which a specific term of service is not required. (History: 19-2-403, MCA; IMP, 19-3-515, MCA; NEW, 2003 MAR p. 1982, Eff. 9/12/03.)

Rules 2.43.443 through 2.43.449 reserved

2.43.450 NOTICE TO POTENTIALLY ELIGIBLE EMPLOYEES
(REPEALED) (History: 19-2-403, 19-3-908, MCA; IMP, 19-3-908, MCA; NEW, 1993 MAR p. 2008, Eff. 8/27/93; REP, 1996 MAR p. 408, Eff. 2/9/96.)

2.43.451 PURCHASE OF ADDITIONAL SERVICE BY EMPLOYERS

(1) Additional service purchased for members eligible for the retirement incentive program under 19-2-706, MCA, is limited to 3 years or restrictions otherwise in place in 19-3-513, MCA. The number of months of active duty military service or service from other public retirement systems purchased by a member after January 1, 1990, will reduce the amount of additional service for which the member is eligible to a combined total of no more than 60 months.

(2) Members must apply for additional service under the retirement incentive program on forms provided by the board prior to their voluntary termination from covered employment during the window period.

(3) Members involuntarily terminated must apply for additional service under the retirement incentive program on forms provided by the board on or after May 14, 1993, but prior to January 1, 1994. Members applying under 19-2-706, MCA, must apply after January 1, 1995, on forms provided by the board.

(4) The board will review the applications to determine the number of years of additional service an employer may purchase for the member. The board will also determine the number of years of additional service which a member is eligible to purchase on their own behalf. The board may request any additional information it deems necessary from the employer or the member to complete this review.

(5) After review, the board will send the application to the employer to certify the following data:

- (a) termination date;
- (b) reason for termination (voluntary, reduction in force, or other);
- (c) whether the member has taken advantage of other benefits provided as an alternative to this program; and
- (d) whether the position was eliminated or reclassified.

(6) After receiving certification, the board will formally review and approve the request.

(7) The board will base the cost on the member's final 12 months of service, ending with the last full month of service. When calculating the cost for a member working part-time but whose final average salary will be based on full-time service, the final 12-month salary will be proportionally adjusted. The cost for purchasing the service will be billed to the member's former employer after approval of the application and the additional service will be utilized when computing the member's retirement benefit.

(8) A cost statement to purchase the additional service will be sent to the employer after the member terminates. The employer may pay the amount in full within one month of billing, or may select an installment plan. Under an installment plan, the maximum period is 10 years, and employers may make annual or monthly payments. Installment plans will include interest at an effective annual rate of 8%, compounded monthly. The board will provide early payoff or pay down figures at the request of employers. Prepayments will not relieve the employer of the obligation to make the next installment payment unless the amount owing is paid in full. (History: 19-2-403, 19-3-908, MCA; IMP, 19-2-706, 19-3-908, MCA; NEW, 1993 MAR p. 2008, Eff. 8/27/93; AMD, 1995 MAR p. 1320, Eff. 7/14/95; AMD, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.452 RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION

(1) A member who receives additional service under 19-2-706 or 19-3-908, MCA, may again be employed within the same jurisdiction. However, the member may only work for less than 960 hours in a position covered by the public employees' retirement system or 600 hours in a position covered by another Title 19, MCA, retirement system during any calendar year. A retired member must terminate employment and receive at least one monthly retirement benefit before returning to active service. An inactive member may return to active service within the same jurisdiction after a five-day break in service.

(2) A member who receives the incentive, and returns to employment within the same jurisdiction, must notify the board within one week of employment. Service performed under an independent contract that fails the tests set out in ARM 2.43.302 is employment subject to the 600-hour or the 960-hour limitation and reporting requirements.

(3) Employers must report to the board the following information:

(a) a member who took advantage of the provisions of 19-2-706 or 19-3-908, MCA, and who returns to work within the same jurisdiction;

(b) current hours worked and amounts paid to the member; and

(c) each member's active service or employment after retirement with an independent contractor or as an independent contractor.

(4) When a member works for 960 or more hours in a position covered by the public employees' retirement system or for 600 or more hours for another Title 19, MCA, retirement system, for the same jurisdiction, the member forfeits the additional service. The board will give employers a credit for the amount they paid for the service minus the total retirement benefits paid to the member. If the employer is paying on an installment contract, the amount due will be the total benefits paid from retirement to forfeiture. The board will charge interest at an effective annual rate of 8%, compounded monthly, for any outstanding balance. (History: 19-2-403, 19-3-908, MCA; IMP, 19-2-706, 19-3-908, MCA; NEW, 1993 MAR p. 2008, Eff. 8/27/93; AMD, 1993 MAR p. 2762, Eff. 11/25/93; AMD, 1995 MAR p. 1320, Eff. 7/14/95; AMD, 1999 MAR p. 1504, Eff. 7/2/99; AMD, 2001 MAR p. 1834, Eff. 9/21/01.)

2.43.453 INFORMATION TO BE RETAINED BY EMPLOYERS
(REPEALED) (History: 19-2-403, MCA; IMP, 19-3-908, MCA NEW, 1993 MAR p. 2008, Eff. 8/27/93; AMD, 1993 MAR p. 2762, Eff. 11/25/93; REP, 1996 MAR p. 408, Eff. 2/9/96.)

Sub-Chapter 5

Service and Disability Retirement

2.43.501 SERVICE RETIREMENT -- WHEN EFFECTIVE (IS HEREBY REPEALED) (History: 19-3-903, 19-5-201, 19-6-201, 19-8-201, MCA; IMP, 19-3-903, 19-5-501, 19-6-501, 19-8-601, MCA; Eff. 12/31/72; REP, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.502 APPLICATION PROCESS FOR DISABILITY BENEFITS

(1) Except as submitted by board members or the MPERA staff acting in those capacities, a request for the determination of disability benefit rights must be initiated in writing, utilizing appropriate forms, and must be accompanied by all relevant information available to the requesting party.

(a) The requesting party may provide additional information for consideration until 10 days (20 days for medical information which must be reviewed by a medical doctor) prior to the next scheduled board meeting, or, if different, the board meeting at which the request will be considered.

(b) The board or MPERA may require the requesting party to provide specific information prior to board determination.

(2) All forms necessary to apply for disability benefits may be obtained from the MPERA.

(3) All forms must be completed and submitted to the MPERA before the board will act on the application for disability benefits. A completed application must include the following forms:

- (a) application for disability retirement;
- (b) job duty questionnaire for disability retirement;
- (c) attending physician's statement; and
- (d) authorization to release information.

(4) The employer of the disability benefit applicant must define the essential elements of the member's position and show reasonable accommodation was attempted for the member's disabling condition(s) in compliance with the Americans with Disabilities Act (ADA), statutes and rules.

(5) "Total inability" for purposes of determining disability means the member is unable to perform the essential elements of the member's job duties even with reasonable accommodation required by the ADA.

(6) The factors the board will consider in determining total inability and the permanence of a disability will include, but are not limited to:

- (a) availability and use of sick leave;
- (b) vocational rehabilitation;
- (c) medical treatment; and
- (d) whether employment has been terminated. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-2-406, 19-3-1002, 19-3-1005, 19-3-2141, 19-5-601, 19-6-601, 19-7-601, 19-8-701, 19-9-902, 19-13-802, MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1994 MAR p. 291, Eff. 2/11/94; AMD, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.503 APPLICATION PROCESS FOR SERVICE RETIREMENT

(1) In order to receive the first retirement benefit in a timely manner, prospective retirees must request an estimate of retirement benefits no less than 30 days prior to a member's anticipated retirement date.

(2) The request must include the retiring member's:

- (a) full name;
- (b) social security number;
- (c) mailing address;
- (d) date of birth;
- (e) name of beneficiary;
- (f) beneficiary's social security number;
- (g) beneficiary's date of birth; and
- (h) anticipated date of retirement.

(3) The division will compute estimates of retirement benefits for the eligible retiring member (and his beneficiary under any options which are statutorily available to members of some systems) and will mail those estimates along with complete retirement information and an application for service retirement to the member.

(4) Based on the retirement estimates and information provided by the division, the member must elect a regular, early, or optional retirement (if eligible) and must return the signed retirement application to the board along with copies of his and his beneficiary's birth certificates or other acceptable proof of age, before benefits will be paid. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, parts 9 and 11, Ch. 5, parts 5 and 7, Ch. 6, part 5, Ch. 7, parts 5 and 7, Ch. 8, parts 6 and 8, Ch. 9, part 8, Ch. 13, part 7, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.504 ACCEPTABLE PROOF OF DATE OF BIRTH (1) A certified copy of a birth certificate or state birth registration shall be proof of the date of birth for the purpose of completing an application for retirement benefits.

(2) If a birth certificate or state birth registration is not available, the board will accept the following, in order of preference, as proof of date of birth:

- (a) baptismal record;
- (b) selective service record;
- (c) armed forces discharge;
- (d) passport;
- (e) school record;
- (f) life insurance policy;
- (g) naturalization record;
- (h) alien registration record; or
- (i) such other records as may be submitted by the member which are acceptable to the board. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, Title 19, Ch. 3, parts 9 and 11, Ch. 5, parts 5 and 7, Ch. 6, part 5, Ch. 7, parts 5 and 7, Ch. 8, parts 6 and 8, Ch. 9, part 8, Ch. 13, part 7, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.505 INVOLUNTARY RETIREMENT (1) An elected official, who is a member of either the judges' or sheriffs' retirement systems due to the elected office he holds, is eligible for an involuntary retirement allowance only when he runs for and loses an election which would have continued him in a covered office, provided the requisite number of years of total service have been performed.

(2) If an elected official chooses not to run, runs for another office which is not covered by that retirement system, or is otherwise removed from office for cause, he shall not be eligible for an involuntary retirement allowance.

(3) A member of the sheriffs' retirement system who does not hold elected office is eligible for an involuntary retirement allowance only upon termination from active duty due to a reduction in force. (History: 19-5-201, 19-7-201, MCA; IMP, 19-5-503, 19-7-504, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1991 MAR p. 2216, Eff. 11/15/91.)

2.43.506 RETURN TO COVERED EMPLOYMENT BY RETIREE - REPORT

(1) A retired PERS member who is employed, after retirement, in a position covered by the PERS must be reported to the MPERA on a monthly basis. This reporting requirement does not apply to a PERS retiree who is elected to a state or local public office and chooses to not become an active member of PERS.

(2) A retired sheriffs' retirement system (SRS) member who is employed, after retirement, in a position covered by the SRS must be reported to the MPERA on a monthly basis.

(3) The MPERA must receive the report by the 15th of the month following the month for which employment is being reported.

(4) The report must include the following information:

- (a) working retiree's name and social security number;
- (b) month and year being reported;
- (c) name and address of working retiree's employer;
- (d) number of hours worked for the employer; and
- (e) gross compensation received from the employer.

(5) The report must be signed by both the employer and the working retiree.

(6) A separate report must be filed with MPERA for each employment. (History: 19-2-403, MCA; IMP, 19-3-1104, 19-3-1106, 19-7-1101, MCA; NEW, 1990 MAR p. 994A, Eff. 7/1/90; AMD, 1991 MAR p. 2216, Eff. 11/15/91; AMD, 2003 MAR p. 1981, Eff. 9/12/03.)

2.43.507 ELECTION FOR COVERAGE UNDER NONDISCRIMINATORY PERS DISABILITY PROVISIONS (REPEALED) (History: 19-2-403, 19-3-304, MCA; IMP, 19-3-1002, 19-3-1008, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91; REP, 1994 MAR p. 2106, Eff. 7/8/94.)

2.43.508 PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS (1) The medical status of each member receiving a disability benefit will be reviewed annually by the board to determine whether the member continues to be disabled, unless:

(a) the board determines reviews are unnecessary and may be discontinued;

(b) the board determines more frequent reviews are warranted by the nature of the disability;

(c) the board converts the disability retirement benefit of a participant in the defined benefit retirement plan to a service retirement benefit; or

(d) a participant in the defined contribution retirement plan receiving a disability benefit reaches 60 years of age.

(History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.509 PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS -- INITIAL NOTICE (1) The MPERA will send written notification of medical review to a member receiving a disability benefit which is subject to review. The notice will be sent to the member at the most recent address provided and will inform the member of:

(a) the date by which medical information and records must be received; and

(b) any specific medical tests or diagnosis required for the review.

(2) The member will be required to have the results of a current medical examination, including any specifically required tests or diagnosis, submitted directly to the MPERA by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination must be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to receipt by the MPERA.

(3) Disabled retirees of the highway patrol officers', sheriffs', game wardens' and peace officers', municipal police officers' and firefighters' unified retirement systems will be reimbursed for travel necessary to obtain the required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for meals and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA. The actual cost of lodging will be reimbursed up to a maximum of \$40 per day. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1995 MAR p. 206, Eff. 2/10/95; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.510 INITIAL AGENCY REVIEW OF MEDICAL EVIDENCE -- NOTICE OF ADDITIONAL EVIDENCE REQUIRED (1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If the MPERA determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, the MPERA will send written notice to the member of the specific additional examinations or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to the MPERA by the examining physician.

(4) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence submitted will be presented to the board along with staff recommendations regarding continuing disability of the member. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.511 FAILURE TO RESPOND -- SECOND NOTICE (1) A member who fails to submit all medical information as required in the notice will be sent a "second notice" by certified mail, return receipt requested. The second notice will inform the member of:

(a) any specific medical tests or diagnosis required by the board for the review; and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate scheduled appointments. The written request justifying the need for additional time must be received by the MPERA at least 15 days prior to the end of the time period. Any requests for extensions in excess of 30 days will not be approved. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.512 SUSPENSION OF DISABILITY BENEFITS -- NOTICE

(1) If the member fails to respond appropriately to the second notice, the MPERA will notify the member, by certified mail, return receipt requested, that disability benefits have been suspended.

(2) The suspension notice will also inform the member that:

(a) the disability benefit will be cancelled if the previously noticed medical reports and information are not provided to the MPERA within 30 days from the date of notice;

(b) deductions from benefits for insurance premiums paid to an employer-sponsored health insurance plan, if any, will continue to be paid on the member's behalf until such time as the board cancels the benefits; and

(c) disability benefits will not be restored until such time as the board determines the member has demonstrated continuous disability. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.513 CANCELLATION OF DISABILITY BENEFITS FOR REFUSAL TO COMPLY -- NOTICE (1) Failure to appropriately respond to the notice of suspension will be deemed refusal to submit to a medical review and cause for cancellation of the disability benefit. The member will be notified of the effective date of cancellation of benefits by certified mail, return receipt requested.

(2) The effective date of cancellation will be the first day of the month following the date of the cancellation notice.

(3) The notice of cancellation will inform the member of appeal rights under the board's rules for contested cases and any rights for service retirement benefits or distribution of the member's DCRP individual account, or for requesting termination of membership from the retirement system. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1995 MAR p. 206, Eff. 2/10/95; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.514 CANCELLATION OF DISABILITY BENEFITS DUE TO CHANGE OF MEDICAL STATUS (1) If the board determines the medical information available, including that provided by the member, does not demonstrate continuing disability, the monthly disability benefit will be cancelled.

(2) The effective date of cancellation for members of public employees', judges' and elected officials of the sheriffs' retirement systems will be the first day of the second month following board action (e.g. board action to cancel disability benefits on January 28, would result in cancellation of the March benefit).

(3) Except in the case of a member of the judges' retirement system or an elected official of the public employees' and sheriffs' retirement systems, the member's former employer will be notified of the member's eligibility for reinstatement to service. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 1995 MAR p. 206, Eff. 2/10/95; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.515 APPEAL OF CANCELLATION OF BENEFITS (1) A member may appeal the cancellation of disability benefits only by requesting an administrative hearing (contested case) in writing within 30 days after the effective date of the cancellation. (History: 19-2-403, 19-3-2104, 19-3-2141, MCA; IMP, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA; NEW, 1994 MAR p. 2106, Eff. 7/8/94; AMD, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.516 through 2.43.519 reserved

2.43.520 ELECTION FOR GUARANTEED ANNUAL BENEFIT ADJUSTMENT COVERAGE (GABA) (1) Members, contingent annuitants, and survivors of the following retirement systems must file an election to receive the benefit increases provided by GABA:

- (a) judges' retirement system (JRS);
- (b) highway patrol officers' retirement system (HPORS);
- (c) municipal police officers' retirement system (MPORS);

and

- (d) firefighters' unified retirement system (FURS).

(2) The election must be made on forms provided by the board and must be filed with the board on or before December 1, 2001. This election does not apply to monthly benefits payable prior to January 2002.

(3) Members, contingent annuitants, and survivors who fail to file the election prior to December 1, 2001, will not receive benefit increases under GABA. These people will continue to receive the minimum benefits in effect before July 1, 1997, and thereafter as determined in statute. The MPERA will notify these people that they will receive the minimum benefits but not increases under GABA.

(4) A revocation of an election made pursuant to Ch. 149, L. 2001 must be made by the member in writing and must be filed with the board prior to December 1, 2001. All elections made pursuant to Ch. 149, L. 2001 are irrevocable as of December 1, 2001. (History: 19-2-403, 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA; IMP, 19-2-1101, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, 19-13-1011, MCA; NEW, 1997 MAR p. 2280, Eff. 12/16/97; AMD, 2001 MAR p. 1834, Eff. 9/21/01.)

Sub-Chapter 6

Payments and Adjustments

2.43.601 ESTIMATES OF RETIREMENT BENEFITS (IS HEREBY REPEALED) (History: Secs. 19-3-304, 19-5-201, 19-6-201, and 19-8-201 MCA; IMP, Secs. 19-3-304, 19-5-201, 19-6-201, and 19-8-201 MCA; Eff. 12/31/72; REP, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.602 PAYMENT OF RETIREMENT BENEFITS (IS HEREBY REPEALED) (History: Secs. 19-3-304, 19-5-201, 19-6-201, and 19-8-201 MCA; IMP, Secs. 19-3-304, 19-5-201, 19-6-201, and 19-8-201 MCA; Eff. 12/31/72; REP, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.603 REFUNDS (1) Any contributing member whose service has been discontinued for any reason other than death or retirement, may elect to withdraw his accumulated contributions provided:

(a) he makes written request on an application provided by the PERD, and

(b) all refund applications must be completed by both the employee and the employer, notarized, and forwarded to the PERD by the employer, and

(c) the contribution and service credit from the report on which the member last appears is credited to his account, and

(d) the member is not returning to covered employment for at least 30 days.

(2) Correctly completed and submitted refund applications will be processed within three weeks after the member's final contributions are credited to his account, including termination payments of sick and annual leave.

(3) The employer portion of the refund application need not be completed if the member's account has been inactive for more than three months.

(4) Additional contributions will be refunded no more than once each 6 months or upon termination.

(5) Request for additional contribution refund must include the notarized signature of the member, but the employer portion need not be completed.

(6) Refunds of total additional contributions must include accrued interest.

(7) No partial refunds of normal contributions or accumulated contributions will be made.

(8) Refund of employer contributions will not be made except where it can be documented, to the division's satisfaction, that an error has been made in the employer contribution paid. (History: Secs. 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202 MCA; IMP, Secs. 19-3-703, 19-5-403, 19-6-403, 19-7-304, 19-8-503, 19-9-304, 19-9-602 and 19-13-602 MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.604 DEATH PAYMENTS, SURVIVOR BENEFITS, AND OPTIONAL RETIREMENT BENEFITS (1) Upon the death of a member, the member's designated beneficiary, statutory beneficiary, or contingent annuitant must submit a certificate of death and a completed MPERA death claim form to the MPERA.

(2) If the designated or statutory beneficiary predeceases the member, the member's estate or next of kin as defined in 19-2-802, MCA, must file the documents required in (1).

(3) If the designated or statutory beneficiary renounces their interest in their payment rights, a contingent beneficiary may submit the documents required in (1).

(4) Upon receipt of the documents required in (1), MPERA staff will advise the beneficiary or contingent annuitant of the benefits available.

(5) Death claim forms are available at the MPERA office. (History: 19-2-403, MCA; IMP, 19-2-801, 19-3-1201, 19-5-801, 19-5-802, 19-6-901, 19-6-902, 19-6-903, 19-7-901, 19-8-1001, 19-8-1002, 19-8-1003, 19-9-1101, 19-9-1102, 19-13-902, 19-13-903, MCA; Eff. 12/31/72; AMD, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2001 MAR p. 1834, Eff. 9/21/01.)

2.43.605 DESIGNATION OF BENEFICIARY (1) The participant shall make the selection of beneficiary, in writing and on the form provided by the division for this purpose, dated and signed by the participant and witnessed by a disinterested third party who shall attest to the voluntary nature of the participant's action.

(2) The designation of beneficiary shall be effective immediately upon receipt by the division. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-1301, 19-5-602, 19-6-602, 19-7-602, 19-8-702, 19-9-912, 19-13-903, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.606 CONVERSION OF OPTIONAL RETIREMENT (1) A retiree who converts to an option 1 retirement benefit pursuant to 19-3-1501(5)(a)(i), 19-5-701(7)(a)(i), 19-7-1001(7)(a)(i), or 19-8-801(7)(a)(i), MCA (PERS, JRS, SRS, and GWPORS, respectively) will receive a retirement benefit in the same dollar amount the retiree was receiving when the contingent annuitant died, effective the first day of the month following the contingent annuitant's death.

(2) A retiree who converts to an option 1 retirement benefit pursuant to 19-3-1501(5)(a)(ii), 19-5-701(7)(a)(ii), 19-7-1001(7)(a)(ii), or 19-8-801(7)(a)(ii), MCA, (PERS, JRS, SRS, and GWPORS, respectively) after dissolution of marriage to the contingent annuitant, will receive an option 1 retirement benefit the same as the option 1 retirement benefit calculated when the member retired, plus any postretirement adjustments granted after the date of retirement. The change to option 1 will be effective on the first day of the month following the month the MPERA receives the properly completed application forms.

(3) A retiree who converts to an option 1 retirement as described in (1) or (2) may subsequently designate a new contingent annuitant and elect an option 2, 3, or 4 retirement benefit. The new benefit amount will be calculated by applying the current actuarial reduction factors to the option 1 benefit as described in (1) or (2), but based upon the age of the new contingent annuitant and the retiree on the effective date of the conversion. The subsequent change to an option 2, 3, or 4 retirement and the amount of the retirement benefit will become effective on the earliest date the retiree could have designated the new contingent annuitant. If the new contingent annuitant is the retiree's new spouse, the effective date will be the date the retiree married the new contingent annuitant. (History: 19-2-403, 19-5-701, 19-7-1001, 19-8-801, MCA; IMP, 19-3-1501, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1994 MAR p. 291, Eff. 2/11/94; AMD, 1995 MAR p. 1791, Eff. 9/15/95; AMD, 2002 MAR p. 1890, Eff. 7/12/02.)

2.43.607 PAYMENT TO AN ESTATE (1) Payment due to an estate will be made upon receipt of a certified copy of one of the following:

(a) letters testamentary which are issued to a person named personal representative of an estate;

(b) an order admitting a will to probate as evidence of title;

(c) an affidavit filed with the county court under the Small Estates Provisions of the Uniform Probate Code, Title 72; or

(d) a judgment to declare heirship under the provisions of the Uniform Probate Code, Title 72L. (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-1302, Title 19, Ch. 5, part 6, Ch. 6, part 6, Ch. 7, part 6, Ch. 8, part 7, 19-9-912, 19-13-903, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86.)

2.43.608 REDUCTION IN WORK FORCE (REPEALED) (History: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA; IMP, 19-3-703, 19-5-403, 19-6-403, 19-7-304, 19-8-503, 19-9-304, 19-9-602, 19-13-304, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1994 MAR p. 291, Eff. 2/11/94.)

2.43.609 POST-RETIREMENT ADJUSTMENT (1) Post-retirement adjustments for PERS, game wardens and sheriffs' retirement system retirees will be made in each year the amount in the reserve fund is adequate for this purpose as provided in 19-3-1110(3), 19-7-709(3) and 19-8-809(3), MCA.

(2) In accordance with 19-3-1110, 19-7-709, and 19-8-809, MCA, funding available for post-retirement adjustments is determined at the end of each fiscal year, by subtracting from the total investment income, the actuarial amount necessary to fund the retirement system and multiplying the remainder by the portion of the retirement fund balance representing retired members.

(a) "Total investment income" earned on a pension trust fund in a fiscal year is the net investment yield realized by the pension trust fund during that fiscal year. Unrealized gains or losses, such as unrealized appreciation or depreciation in market value, shall not be considered when calculating total investment income.

(b) The "actuarial amount required to fund the retirement system" is investment income, after payment of administrative and investment expenses, sufficient to attain the actuarially required rate of return for the year(s) since the last postretirement adjustment. The actuarially required rate is the rate recommended by the consulting actuary and adopted and published by the board pursuant to ARM 2.43.304.

(c) The "portion of the retirement fund balance representing retired members" is a percentage equal to the present value of accrued benefits for retirees divided by the present value of accrued benefits for all members.

(3) Eligibility for post-retirement adjustments will be determined as of June 30th of each year that investment earnings are available for that purpose.

(4) Adjustments to the benefits of eligible recipients, determined in (2) above, will be paid beginning in the succeeding January.

(5) If the eligible retiree or survivor has elected to receive an option 2, 3, or 4 retirement allowance, the post retirement adjustment must be adjusted using the most recent actuarial tables adopted by the board. (History: 19-3-304, 19-7-201, 19-8-201, MCA; IMP, 19-3-1109, 19-3-1110, 19-3-1111, 19-7-708, 19-7-709, 19-7-710, 19-8-808, 19-8-809, 19-8-810, MCA; NEW, 1990 MAR p. 1250, Eff. 7/1/90; AMD, 1993 MAR p. 1200, Eff. 6/11/93.)

2.43.610 MINIMUM BENEFIT ADJUSTMENT FOR RETIREES WITH PART-PAID FIREFIGHTER SERVICE (1) If a member of the firefighters' unified retirement system has part-paid service in that retirement system, the minimum retirement benefit payable to that retiree will be 7.5% of a newly confirmed firefighter's salary in the city from which he retires. (History: 19-13-202, MCA; IMP, 19-13-1007, 19-13-1009, MCA; NEW, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.611 MUNICIPAL POLICE OFFICERS' SUPPLEMENTAL BENEFITS AND ALLOWANCE ADJUSTMENTS (1) When a city belonging to the municipal police officers' retirement system has not negotiated a salary agreement with their actively employed police officers by July 1, the following actions will be taken by the public employees' retirement division:

(a) Supplemental benefits and allowance adjustments will be paid to retirees from that city which will be calculated using the base salary of a newly confirmed police officer of that city during the most recently reported fiscal year for which there was a negotiated salary agreement in effect.

(b) By August 1 a report will be sent to the state auditor stating the supplemental benefits payable from the appropriate insurance premium tax funds based upon information available from cities as of that date.

(c) As salary agreements are negotiated by cities and the retirement division is notified of changes in base pay for newly confirmed police officers, supplemental benefits will be recalculated and adjustments paid retroactively to retired members from those cities.

(d) Updated reports will be sent to the state auditor certifying the additional supplemental benefits payable from insurance premium tax funds during a given fiscal year as those additional amounts become known. (History: 19-9-201, MCA; IMP, 19-9-1007, 19-9-1011, MCA; NEW, 1991 MAR p. 2216, Eff. 11/15/91.)

2.43.612 ELIGIBILITY FOR ANNUAL BENEFIT ADJUSTMENT
(REPEALED) (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, 19-13-202, MCA; IMP, 19-15-102, MCA; NEW, 1991 MAR p. 2402, Eff. 12/13/91; AMD, 1992 MAR p. 2721, Eff. 12/25/92; REP, 1995 MAR p. 533, Eff. 4/14/95.)

2.43.613 CALCULATION OF ANNUAL BENEFIT ADJUSTMENT
(REPEALED) (History: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-203, 19-13-202, MCA; IMP, 19-15-102, MCA; NEW, 1991 MAR p. 2402, Eff. 12/15/91; AMD, 1992 MAR p. 2721, Eff. 12/25/92; REP, 1995 MAR p. 533, Eff. 4/14/95.)

2.43.614 ANNUAL CERTIFICATION OF PENSION PAYMENTS BY LOCAL POLICE AND FIRE PENSION PLANS (REPEALED) (History: 19-15-101, MCA; IMP, 19-15-101, MCA; NEW, 1991 MAR p. 2402, Eff. 12/15/91; AMD, 1992 MAR p. 2721, Eff. 12/25/92; REP, 1995 MAR p. 533, Eff. 4/14/95.)

2.43.615 FAMILY LAW ORDERS -- CONTENTS AND DURATION
(History: 19-2-403, MCA; IMP, 19-2-907, MCA; NEW, 1993 MAR p. 2400, Eff. 10/15/93; AMD, 2002 MAR p. 2182, Eff. 8/16/02; TRANS, to ARM 2.43.1704, Eff. 9/30/02.)

2.43.616 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION
(History: Sec. 19-2-403, MCA; IMP, 19-2-907, MCA; NEW, 1993 MAR p. 2400, Eff. 10/15/93; AMD, 2002 MAR p. 2182, Eff. 8/16/02; TRANS, to ARM 2.43.1705, Eff. 9/30/02.)

2.43.617 PAYMENT OF ESTIMATED BENEFITS (1) The division shall pay estimated retirement benefits to qualified members for up to three months. To qualify for estimated retirement benefits, a member must file an application for early or normal service retirement, terminate active service, and meet retirement age and membership service requirements.

(2) The division shall pay estimated disability retirement benefits for up to three months to members granted disability retirement status by the board.

(3) The division shall obtain from the employer all documentation necessary to determine the member's total service credit and final compensation and calculate the amount of the member's retirement benefit. The member's retirement application shall be submitted to the board for approval at the next meeting after the division finalizes the benefit amount.

(4) Estimated retirement benefits will be suspended after three months if the member's retirement application has not been finalized by the division and approved by the board. Monthly benefit payments to the member will not resume until after the board approves the retirement application. The first payment following board approval will include any previously suspended payments and retroactive amounts owed the member. (History: 19-2-403, MCA; IMP, 19-2-403, 19-2-502, MCA; NEW, 1994 MAR p. 3182, Eff. 12/23/94.)

Sub-Chapter 7

Social Security Coverage
for Employees of the State and its Political Subdivisions

2.43.701 POLITICAL SUBDIVISIONS ELIGIBLE FOR TERMINATION
(REPEALED) (History: 19-1-201, MCA; IMP, 19-1-301, MCA; NEW,
Eff. 6/5/76; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.702 INITIATION OF PROCEEDING (REPEALED) (History:
19-1-201, MCA; IMP, 19-1-301, MCA; NEW, Eff. 6/5/76; REP, 1990
MAR p. 994A, Eff. 7/1/90.)

2.43.703 TRANSMISSION OF CERTIFIED COPY OF RESOLUTION
(REPEALED) (History: 19-1-201, MCA; IMP, 19-1-301, MCA; NEW,
Eff. 6/5/76; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.704 AUTHORIZATION OF REFERENDUM BY GOVERNOR
(REPEALED) (History: 19-1-201, MCA; IMP, 19-1-301, 19-1-302,
MCA; NEW, Eff. 6/5/76; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.705 NOTICE OF REFERENDUM (REPEALED) (History: 19-
1-201, MCA; IMP, 19-1-303, MCA; NEW, Eff. 6/5/76; REP, 1990 MAR
p. 994A, Eff. 7/1/90.)

2.43.706 PROOF OF NOTICE (REPEALED) (History: 19-1-201,
MCA; IMP, 19-1-303, MCA; NEW, Eff. 6/5/76; REP, 1990 MAR p.
994A, Eff. 7/1/90.)

2.43.707 ELIGIBILITY TO VOTE IN REFERENDUM (REPEALED)
(History: 19-1-201, MCA; IMP, 19-1-301, 19-1-302, MCA; NEW,
Eff. 6/5/76; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.708 CERTIFICATE OF RESULTS OF REFERENDUM (REPEALED)
(History: 19-1-201, MCA; IMP, 19-1-302, 19-1-304, MCA; NEW,
Eff. 6/5/76; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.709 NOTICE OF TERMINATION OF COVERAGE (REPEALED)
(History: 19-1-201, MCA; IMP, 19-1-304, MCA; NEW, Eff. 6/5/76;
REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.710 WITHDRAWAL OF NOTICE OF TERMINATION (REPEALED)
(History: 19-1-201, MCA; IMP, 19-1-304, MCA; NEW, Eff. 6/5/76;
REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.711 DEFINITIONS (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.712 REQUIRED REPORTS (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, part 7, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1990 MAR p. 994A, Eff. 7/1/90.)

2.43.713 COVERAGE PROCEDURES FOR POLITICAL SUBDIVISIONS NOT UNDER A RETIREMENT SYSTEM (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, parts 3, 5, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.714 COVERAGE PROCEDURES FOR POLITICAL SUBDIVISIONS UNDER A RETIREMENT SYSTEM (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, parts 3, 5, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.715 ERROR DISCOVERED BY SOCIAL SECURITY ADMINISTRATION (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, parts 7, 8, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

2.43.716 LATE FILING PENALTIES (REPEALED) (History: 19-1-201, MCA; IMP, Title 19, Ch. 1, parts 7, 8, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 1990 MAR p. 994A, Eff. 7/1/90; REP, 1999 MAR p. 1504, Eff. 7/2/99.)

Sub-Chapter 8

Volunteer Firefighters

2.43.801 BASIC UNIT OF SERVICE TIME (1) As of July 1, 1965, the basic unit of service time for volunteer firefighters is one fiscal year. Volunteer firefighters not continuously on the active membership list of a single qualifying volunteer fire company for the entire fiscal year shall not be listed on the annual certificate and shall not receive credit for service under the Volunteer Firefighters' Compensation Act for that fiscal year.

(2) A volunteer firefighter shall receive one year of credit for service under the Volunteer Firefighters' Compensation Act for each two full fiscal years of service performed prior to July 1, 1965. (History: 19-17-203, MCA; IMP, 19-17-201, 19-17-401, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1188, Eff. 6/13/03.)

2.43.802 REQUIRED REPORTS (1) In order to receive credit for service under the Volunteer Firefighters' Compensation Act, volunteer fire departments must submit an "annual certificate" to the MPERA. The certification is a report by the fire chief that the members listed on the certificate were active for the full fiscal year and also had the required 30 hours of training. This report is on a fiscal year basis (July through June) and is due by September 1 of each year. The annual certificate is signed by the fire chief and notarized. Annual certificate forms are provided by the MPERA.

(2) Annual certificates filed after the September 1 due date must be appealed to and considered by the board for approval. Information provided by the fire chief to the board must include:

- (a) the original, notarized annual certificate;
- (b) certified training documents showing the required 30 hours of training per listed member;
- (c) a letter from the fire chief explaining why the annual certificate was not submitted timely; and
- (d) if requested by the fire chief, oral argument before board. (History: 19-17-203, MCA; IMP, 19-17-201, 19-17-402, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1188, Eff. 6/13/03.)

2.43.803 APPLICATION FOR GROUP INSURANCE PREMIUM PAYMENTS

(1) Each volunteer fire company is eligible for payments toward supplemental insurance coverage for their active members provided the company submits by December 31 of each year:

- (a) an application form (as provided by the MPERA);
- (b) a copy of the department's active membership list certified by the county clerk as required by 7-33-2311, MCA; and
- (c) proof of insurance. (History: 19-17-203, MCA; IMP, 19-17-103, 19-17-201, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1188, Eff. 6/13/03.)

2.43.804 PAYMENTS TO SERVICE PROVIDERS FOR MEDICAL EXPENSES RESULTING FROM DUTY-RELATED INJURIES AND ILLNESSES

(1) Payments for medical expense claims made pursuant to Title 19, chapter 17, part 5, MCA shall be ordered paid directly to medical service providers after:

- (a) the claim is properly filed as described in 19-17-502, MCA; and
- (b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Medical expense claims in excess of \$1,000 must be approved by the board prior to payment by MPERA.

(3) Subsequent insurance settlements in payment of medical expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member or service provider. (History: 19-17-203, MCA; IMP, 19-17-103, 19-17-201, 19-17-506, MCA; NEW, 1986 MAR p. 1454, Eff. 8/29/86; AMD, 2003 MAR p. 1188, Eff. 6/13/03.)

Sub-chapter 9 reserved

Sub-Chapter 10

Public Employees' Retirement System (PERS)
Defined Contribution Retirement Plan

2.43.1001 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board hereby adopts and incorporates by reference the state of Montana public employee defined contribution plan document and trust agreement (July 1, 2002 edition), that was approved by the board on April 26, 2001 and September 28, 2001, and approved by the internal revenue service on September 24, 2001.

(2) Copies of the defined contribution plan document, trust agreement and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@state.mt.us. (History: 19-3-2104, MCA; IMP, 19-3-2102, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1002 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the state of Montana 401(a) defined contribution plan investment policy statement approved by the board on February 26, 2004.

(2) The board adopts and incorporates by reference the state of Montana 401(a) plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@state.mt.us. (History: 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2122, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2004 MAR p. 1131, Eff. 5/7/04.)

2.43.1003 DEFINED CONTRIBUTION RETIREMENT PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the defined contribution retirement plan (DCRP). In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the investment policy statement.

(2) A DCRP participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to the default balanced fund.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s). (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2122, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2004 MAR p. 1131, Eff. 5/7/04.)

2.43.1004 DEFINED CONTRIBUTION RETIREMENT PLAN DEFAULT INVESTMENT FUND (1) The board will identify a balanced fund to be the default investment fund.

(2) The following assets will be deposited in the default investment fund:

(a) assets initially transferred from the PERS defined benefit retirement plan (DBRP) pursuant to ARM 2.43.1030 on behalf of defined contribution retirement plan (DCRP) participants;

(b) assets transferred from a discontinued, but not replaced, investment option pursuant to ARM 2.43.1003(2); and

(c) assets received without the DCRP participant having selected investment options.

(3) These assets will remain in the default investment fund until the DCRP participant files valid investment directions and redirects assets from the default investment fund to the selected investment option(s). (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2114, 19-3-2115, 19-3-2117, 19-3-2122, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2004 MAR p. 1131, Eff. 5/7/04.)

2.43.1005 ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND

(1) The board shall establish a long-term disability trust fund to be used exclusively for the payment of disability benefits to participants of the defined contribution retirement plan (DCRP).

(2) The long-term disability trust fund must be separate and distinct from the defined benefit plan trust fund and the DCRP.

(3) The long-term disability trust fund must be funded by the statutorily determined percentage of the employers' contributions made for employees who are active DCRP participants.

(4) Funds in the long-term disability trust fund will be invested pursuant to Article VIII, section 13, of the Constitution and Title 17, chapter 6, part 2, MCA. No funds will be invested in equities. (History: 19-3-2104, 19-3-2141, MCA; IMP, 19-3-2117, 19-3-2141, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1006 through 2.43.1009 reserved

2.43.1010 ELECTION PERIOD (1) Active PERS members generally have 12 calendar months to complete the retirement plan choice election form provided by the board and file the election form with the MPERA.

(2) Specific categories of PERS members and their election periods are:

(a) A PERS member who is active both on and before July 1, 2002 must file an election by June 30, 2003.

(b) Any PERS member, including seasonal, temporary or part-time employees, who is active both on and before July 1, 2002 and subsequently becomes inactive any time before June 30, 2003, must file an election by June 30, 2003. Members will not have a new election period by virtue of returning to active employment at a later date.

(c) A PERS member newly hired or rehired on or after July 1, 2002 must file an election within 12 calendar months from the initial date of hire or rehire as reported by the reporting agency.

(d) Any PERS member newly hired or rehired on or after July 1, 2002, including seasonal, temporary or part-time employees, who subsequently becomes inactive must file an election within 12 calendar months from the initial date of hire or rehire. Members will not have a new election period by virtue of returning to active employment at a later date.

(e) Any PERS member whose membership has not been properly reported to the MPERA will have 12 calendar months from the date the member is properly reported to file an election. An election to transfer to the PERS defined contribution retirement plan or the Montana university system optional retirement program will be effective upon confirmation by the MPERA pursuant to ARM 2.43.1012 and will not be retroactive.

(f) Employees of any municipal corporation, county or public agency in the state which becomes a contracting employer with the PERS as provided under 19-3-201, MCA will have 12 calendar months from the date the new contracting employer's resolution is signed and approved by the board to file an election. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1011 RETIREMENT PLAN CHOICE ELECTION FORM (1) The board shall provide PERS members a retirement plan choice election form which will require the following information:

- (a) full name (first, last, middle initial);
 - (b) social security number;
 - (c) date of birth;
 - (d) complete address;
 - (e) employing agency or agencies;
 - (f) the member's signature indicating the elected retirement plan or program; and
 - (g) the date the member signed the election form.
- (2) The PERS member shall complete and file the election form directly with the MPERA within the timeframes defined in ARM 2.43.1010. Election forms given to employers or any other party are not considered to be filed with the MPERA.
- (3) The PERS member's election is irrevocable once the election form is filed with the MPERA.
- (4) The effective date of the election will be the date the member's election is confirmed by the MPERA pursuant to ARM 2.43.1012. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1012 ELECTION ELIGIBILITY AND CONFIRMATION (1) Upon receipt of a retirement plan choice election form, the MPERA will verify that the member is eligible to make the election.

- (2) The member is eligible to make an election if all the following conditions are met:
- (a) the member was an active PERS member on or after July 1, 2002;
 - (b) the member made the election within the timeframes defined in ARM 2.43.1010;
 - (c) the member does not have an incomplete PERS defined benefit retirement plan (DBRP) service purchase contract; and
 - (d) the member is not subject to a DBRP family law order.
- (3) The MPERA will confirm the PERS member's eligibility and election within five working days of receipt of the election form.
- (4) The effective date of the election will be the date it is confirmed by the MPERA. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2115, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1013 and 2.43.1014 reserved

2.43.1015 PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT
IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of the
PERS with an existing service purchase contract entered into
pursuant to any MPERA statute or rule who wishes to elect the
defined contribution retirement plan (DCRP) or the Montana
university system's optional retirement plan (ORP) must
terminate or complete the service purchase contract before the
election will be confirmed by MPERA.

(2) If a member of the PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract transferred to the DCRP; or

(c) change the member's election to the DBRP.

(5) If a member chooses the option in (4)(a), the member may, pursuant to ARM 2.43.441, complete the service purchase contract with a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 U.S.C. 403(b) or 26 U.S.C. 457 governmental plan.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election window, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within 30 days, MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election window may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP. The payment must accompany the election form.

(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election window.

(9) A PERS member with an existing service purchase contract entered into pursuant to any MPERA statute or rule who

does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule. (History: 19-3-2104, MCA; IMP, 19-2-710, 19-3-2111, 19-3-2115, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2003 MAR p. 1800, Eff. 8/15/03.)

Rule 2.43.1016 reserved

2.43.1017 FAMILY LAW ORDERS, EXECUTIONS AND INCOME-WITHHOLDING ORDERS AND ELECTIONS (1) A member of the PERS who is subject to a family law order pursuant to 19-2-907, MCA, and wishes to elect the defined contribution retirement plan (DCRP) or the Montana university system's optional retirement program (ORP), must have the family law order amended to comply with the DCRP or ORP and approved by the board no later than the end of the member's 12-month election window.

(2) A member of the PERS who is subject to an execution or income-withholding order pursuant to 19-2-909, MCA, and wishes to elect the DCRP or the ORP, must have the execution or income-withholding order amended to comply with the DCRP or the ORP no later than the end of the member's 12-month election window.

(3) If the order discussed in (1) or (2) is not properly amended and approved by the close of the member's 12-month election window, MPERA will not confirm the member's election. The member will remain a participant of the defined benefit retirement plan. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-907, 19-2-909, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1018 and 2.43.1019 reserved

2.43.1020 ELECTION FOR EMPLOYEES IN OPTIONAL PERS MEMBERSHIP POSITIONS (1) An employee eligible for optional membership under 19-3-412, MCA, who chooses to be a member of the PERS on or after July 1, 2002, will initially be a participant of the PERS defined benefit retirement plan (DBRP). The DBRP participant will have one year from the date he or she elects to be a member of the PERS to file a retirement plan choice election form with the MPERA pursuant to ARM 2.43.1010.

(2) An employee who declines optional membership under 19-3-412, MCA, is not a member of the PERS and has no retirement plan choice. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1021 and 2.43.1022 reserved

2.43.1023 MEMBERSHIP IN OTHER TITLE 19 RETIREMENT PLANS

(1) A PERS member who is also a member of another Title 19 retirement system shall make a retirement plan election pursuant to ARM 2.43.1010 and 2.43.1011.

(2) PERS members employed full- or part-time by both a PERS-covered employer and another Title 19 retirement system employer will be bound by the statutory membership requirements of the PERS defined benefit retirement plan or defined contribution retirement plan, whichever they elect. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1024 RETIREES NOT ENTITLED TO ELECTION

(1) Retired members of the PERS may not elect the PERS defined contribution retirement plan or the Montana university system optional retirement program, but must remain members of the PERS defined benefit retirement plan regardless of reemployment in a PERS-covered position.

(2) Subsection (1) also applies to retired members who later return to active PERS membership. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-1106, 19-3-2104, 19-3-2111, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1025 MONTANA UNIVERSITY SYSTEM EMPLOYEE ELECTIONS

(1) A Montana university system (MUS) employee who is a PERS member is required to make a retirement plan election pursuant to ARM 2.43.1010 and 2.43.1011.

(2) A MUS employee who is a PERS member may be a participant of the MUS optional retirement program (ORP) and either the PERS defined benefit retirement plan (DBRP) or the PERS defined contribution retirement plan (DCRP) only under one of the following conditions:

(a) The PERS member is employed part- or full-time by both the MUS and another PERS covered employer and does not have previous retirement plan election(s) on file with the MPERA. The member may elect the ORP for his or her MUS employment and the DBRP or DCRP for his or her other PERS-covered employment. (b) The PERS member is employed by the MUS, elected the MUS ORP, and accepted employment with another PERS-covered employer, other than MUS. The member may have terminated employment with the MUS or may have taken a separate (second) job with the other PERS-covered employer. In either case, the member must elect either the DBRP or DCRP as the member's retirement plan for the member's employment with the other PERS-covered employer.

(3) A MUS employee who is in both a PERS covered position and an ORP covered position may be a participant of both the MUS ORP and either the DBRP or DCRP. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2104, 19-3-2112, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1026 through 2.43.1029 reserved

2.43.1030 TRANSFER OF DEFINED BENEFIT RETIREMENT PLAN FUNDS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) A PERS member who is active both on and before July 1, 2002 and elects the PERS defined contribution retirement plan (DCRP) will have the following amounts transferred from the PERS defined benefit retirement plan (DBRP) to the member's individual account in the DCRP:

(a) Pre-July 1, 2002 contribution transfer amounts, which are:

(i) 100% of the employee's contributions to the DBRP, plus 8% compounded annual interest; and

(ii) the statutorily required percentage of the employer's contributions to the DBRP, plus 8% compounded annual interest; and

(b) July 1 and post-July 1, 2002 ongoing contribution amounts, which are:

(i) 100% of the employee's statutorily required contributions, plus 8% compounded annual interest; and

(ii) the employer's statutorily required contributions less the statutorily required plan choice rate, the statutorily required education fund rate and the statutorily required defined contribution retirement plan disability rate, plus 8% compounded annual interest.

(2) A PERS member who is active both on and before July 1, 2002, and elects the Montana university system optional retirement program (MUS ORP) will have the following amounts transferred from the DBRP to the member's individual account in the MUS ORP:

(a) Pre-July 1, 2002 contribution transfer amounts, which are:

(i) 100% of the employee's contributions to the DBRP, plus 8% compounded annual interest; and

(ii) the statutorily defined percentage of the employer's contributions to the DBRP, plus 8% compounded annual interest; and

(b) July 1 and post-July 1, 2002 contribution amounts for employees electing the MUS ORP, which are:

(i) 100% of the employee's statutorily required contributions, plus 8% compounded annual interest; and

(ii) the employer's statutorily required contributions less the statutorily required plan choice rate and the statutorily required education fund rate, plus 8% compounded annual interest.

(3) The pre-July 1, 2002 contribution transfer amounts are calculated using the reporting agencies' contribution reports submitted to the MPERA for payrolls through June 2002 only.

(4) The July 1 and post-July 1, 2002 on-going contribution amounts for employees electing the DCRP are calculated beginning with the reporting agencies' July 2002 contribution reports and continue through all subsequent contribution reports until the member's election is filed with and confirmed by the MPERA.

(5) The July 1 and post-July 1, 2002 on-going contribution amounts for employees electing the MUS ORP are calculated beginning with the reporting agencies' July 2002 payroll reports and continue through all subsequent payroll reports until the member's election is filed with and confirmed by the MPERA.

(6) A PERS member newly hired on or after July 1, 2002 who elects the DCRP or the MUS ORP will only have ongoing contribution amounts transferred. (History: 19-2-403, 19-3-2104, 19-3-2112, MCA; IMP, 19-3-2112, 19-3-2114, 19-3-2117, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1031 TIMING OF TRANSFERS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Once a member's election to join either the PERS defined contribution retirement plan (DCRP) or the Montana university system optional retirement program (MUS ORP) has been confirmed, the MPERA will transfer pre-July 1, 2002 contribution transfer amounts and July 1 and post-July 1 contribution amounts within the following timeframes:

(a) For elections received and confirmed prior to August 1, 2002:

(i) the pre-July 1, 2002 contribution transfer amount will be transferred to the participant's individual account in the DCRP or the MUS ORP no later than 30 working days after July 1, 2002 (August 13, 2002); and

(ii) the July contribution amount will be transferred to the individual account in the DCRP or the MUS ORP no later than 10 working days after the date the July payroll is received in good order.

(b) For elections received and confirmed after August 1, 2002, the pre-July 1, 2002 contribution transfer amount and the July 1 and post-July 1, 2002 ongoing contribution amount will be transferred to the participant's individual account in the DCRP or the MUS ORP no later than 15 working days after the MPERA confirms the election. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2114, 19-3-2117, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1032 CREDITING OF INDIVIDUAL ACCOUNTS (1) MPERA will transfer a defined contribution retirement plan (DCRP) participant's statutorily required employee and employer contributions to the DCRP recordkeeper within two working days after receipt in good order of each reporting agency's contribution report and contributions.

(2) The DCRP recordkeeper will credit individual accounts and transfer contributions to a DCRP participant's selected investment option(s) within two working days after receipt of contributions from the MPERA. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-3-2117, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Rules 2.43.1033 through 2.43.1039 reserved

2.43.1040 DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Members of the defined contribution retirement plan (DCRP) who are found by the board to be disabled are entitled to a disability benefit pursuant to 19-3-2141, MCA.

(2) The disability benefit awarded a member of the DCRP is calculated based on the member's years of service credit, not years of membership service. The applied factor, either 1/56 or 1/50, is based on membership service.

(3) The disability benefit awarded a member of the DCRP is not a retirement benefit, but a benefit paid from the long-term disability trust fund established pursuant to 19-3-2141, MCA.

(4) The disability benefit awarded a member of the DCRP is not subject to option 2, option 3 or option 4 contained in 19-3-1501, MCA.

(5) The disability benefit paid to a member of the DCRP is not subject to distribution pursuant to a family law order or a qualified domestic relations order.

(6) Disability benefits paid from the long-term disability trust fund will be tax-reported to the receiving participant and the IRS on the appropriate IRS form. (History: 19-3-2104, 19-3-2141, MCA; IMP, 19-3-2141, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02; AMD, 2003 MAR p. 1800, Eff. 8/15/03.)

Rules 2.43.1041 through 2.43.1044 reserved

2.43.1045 DISTRIBUTION TO PARTICIPANT (1) A defined contribution retirement plan (DCRP) participant is entitled to receive the participant's vested accounts upon termination of service in a PERS-covered position, whether for retirement or for other purposes.

(2) The participant shall, within 120 days after the participant terminates service in a PERS-covered position, notify the MPERA of the date upon which the participant wants distribution of the accounts to start.

(a) Distribution must start no later than April 1 of the calendar year following the later of:

(i) the calendar year in which the participant reaches age 70 1/2; or

(ii) the calendar year in which the participant retires from service in a PERS-covered position.

(b) If the participant does not select the date upon which distributions are to start, distributions will start 120 days after termination of service from a PERS-covered position.

(c) Once selected, the participant may change the distribution date provided the date continues to meet the requirements of (2)(a).

(3) The participant shall also, no later than 30 days before the start of the distribution of the accounts, select a payment option.

(a) Payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, an individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount;

(v) periodic payments based on the participant's life expectancy, determined annually; or

(vi) a life contingent annuity.

(b) No payment option may be selected unless the amounts payable to the participant are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) If the participant does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-1007, 19-3-2123, 19-3-2124, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

2.43.1046 DISTRIBUTION UPON DEATH OF PARTICIPANT (1) If a defined contribution retirement plan participant dies prior to the start of the distribution of the participant's benefits, the participant's beneficiary has the same payment options as the participant would have had.

(a) Those payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, an individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount;

(v) periodic payments based on the beneficiary's life expectancy, determined annually; or

(vi) a life contingent annuity.

(b) No payment option may be selected unless the amounts payable to the beneficiary are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) The beneficiary must select the payment option prior to 60 days after the receipt by the board of the satisfactory proof of the participant's death.

(d) If the beneficiary does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(2) Unless the participant's beneficiary is the participant's spouse, the payment of benefits must start within 60 days after receipt by the board of satisfactory proof of the participant's death.

(3) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to defer distribution until a date no later than the date the participant would have attained age 70 1/2. (History: 19-2-403, 19-3-2104, MCA; IMP, 19-2-1007, 19-3-2124, 19-3-2125, MCA; NEW, 2002 MAR p. 1884, Eff. 7/12/02.)

Sub-Chapter 11

Municipal Police Officers' Retirement System

2.43.1101 DEFINITIONS (1) "DROP" means the deferred retirement option plan.

(2) "DROP accrual" means the amount of money that has accrued to a DROP participant and includes the monthly DROP accrual plus post retirement adjustments, times the applicable number of months of participation, and interest.

(3) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated and retired. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1205, MCA; NEW, 2002 MAR p. 2652, Eff. 7/12/02.)

Rules 2.43.1102 and 2.43.1103 reserved

2.43.1104 DROP APPLICATION PROCESS (1) Eligible members who wish to participate in the DROP must file a DROP information request with the MPERA.

(2) The information request must include the member's:

(a) full name;

(b) social security number;

(c) mailing address;

(d) date of birth; and

(e) anticipated date to start the DROP period.

(3) The MPERA will calculate estimates of monthly DROP accruals and the DROP benefit. The estimates and a DROP application will be sent to the member.

(4) An eligible member who wishes to participate must complete the DROP application and return it to the MPERA.

(a) Except as provided in (4)(b), MPERA must receive the completed application at least two weeks before the first day of the month the member wants the DROP period to be effective; otherwise MPERA will notify the member that the DROP period will be effective the following month. If a birth certificate or other acceptable proof of age is required by the application, it must accompany the application for the application to be complete.

(b) An eligible member who retroactively applies to participate in the DROP within the window provided for in 19-9-1204(6), MCA, must file the application on or before October 1, 2003.

(5) Once the application is received by the MPERA, the election to participate in the DROP is irrevocable. (History: 19-2-403, 19-3-1203, MCA; IMP, 19-3-1203, 19-9-1204, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02; AMD, 2003 MAR p. 1800, Eff. 8/15/03.)

2.43.1105 DROP PERIOD (1) The DROP period must begin on the first day of a month, must be prospective, and must end on the last day of a month. The DROP period will end as specified on the application, upon termination, or upon the participant's death, whichever occurs first.

(2) If the participant terminates or dies during the DROP period, the DROP period will end on the last day of the last full month of active service.

(3) A participant may not receive a retirement or DROP benefit distribution for the month in which they terminate or die. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1203, 19-9-1204, 19-9-1206, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

Rules 2.43.1106 and 2.43.1107 reserved

2.43.1108 DROP PARTICIPATION LIMITS (1) A DROP participant:

- (a) is not eligible for disability retirement;
- (b) may not purchase service;
- (c) may not receive membership or service credit; and
- (d) may not receive a refund. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1203, 19-9-1204, 19-9-1205, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

Rule 2.43.1109 reserved

2.43.1110 ESTIMATED MONTHLY DROP ACCRUAL (1) Once a participant files an application to participate in the DROP, the participant may be paid estimated monthly DROP accruals.

(2) The employer shall provide all documents MPERA needs to determine the participant's total service credit and final average compensation. Once the documents are received, the MPERA will finalize the amount of the participant's monthly DROP accrual. Once the monthly accrual amount is finalized, the board will take appropriate action on the application at the next board meeting.

(3) MPERA will suspend estimated monthly DROP accruals after three months if the employer has not provided the above documents. Monthly DROP accruals will not resume until after the documents are received and the board approves the DROP application. The first monthly DROP accrual following board approval will include any previously suspended accruals and retroactive accruals. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1203, 19-9-1205, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

2.43.1111 INTEREST PAID TO PARTICIPANTS (1) A participant's DROP accrual must include compounded annual interest.

(2) The interest rate will be fixed at the end of each fiscal year and will equal the total rate of return for the trust fund. Interest rates for any part of the current fiscal year will be based on the previous fiscal year's total rate of return.

(3) When the total rate of return for the trust fund is less than zero, participants will receive zero interest. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1206, 19-9-1208, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

2.43.1112 DISTRIBUTION OF DROP BENEFIT (1) The DROP benefit will be distributed upon the participant's termination of employment. The participant may request to receive the DROP benefit in a lump sum, or in a direct rollover to another eligible plan, as allowed by the internal revenue service (IRS).

(2) To make a direct rollover of the DROP benefit, the participant must make arrangements with the other plan and provide any necessary information to the MPERA.

(3) A participant must designate a distribution method within 60 days after termination of employment; otherwise the MPERA will pay the DROP benefit to the participant in a lump sum. Any required federal or state withholding will reduce the amount of the payment.

(4) MPERA will distribute the DROP benefit as soon as administratively feasible once all appropriate documents are received.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient is the surviving spouse, in which case the surviving spouse may choose to receive the DROP benefit in a lump sum or in direct rollover to another eligible retirement plan, as allowed by the IRS. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1206, 19-9-1208, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

2.43.1113 DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER (1) A family law order (FLO) may distribute all or a portion of a DROP participant's DROP benefit to an alternate payee. To do so, the FLO must specifically reference distribution of a DROP benefit and provide a specific method for determining the amount of the DROP benefit to be paid to the alternate payee.

(2) The alternate payee named in the FLO is entitled to the same distribution options available to the participant and as allowed by the IRS.

(3) A FLO may distribute all or a portion of a DROP participant's DROP benefit even if the participant joined the DROP subsequent to approval of the FLO.

(4) A FLO that does not specifically address a DROP benefit will not be considered to distribute any portion of the payee's DROP benefit to an alternate payee.

(5) A FLO cannot specifically require or forbid that the payee participate in the DROP.

(6) To distribute any portion of a participant's DROP benefit, a FLO approved prior to the enactment of the DROP legislation (May 1, 2001) must be amended to specifically address the DROP benefit.

(7) A DROP benefit cannot be distributed pursuant to a FLO until the DROP participant terminates employment. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1208, MCA; NEW, 2003 MAR p. 1801, Eff. 8/15/03.)

Rule 2.43.1114 reserved

2.43.1115 EMPLOYMENT AFTER THE DROP PERIOD (1) Monthly DROP accruals will stop at the end of the designated DROP period even if the participant continues employment.

(2) The participant's monthly service retirement benefit payments will begin the month following the month in which the participant terminates post-DROP employment.

(3) The participant's DROP benefit will be distributed pursuant to ARM 2.43.1112. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1207, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

Rules 2.43.1116 and 2.43.1117 reserved

2.43.1118 GUARANTEED ANNUAL BENEFIT ADJUSTMENT INCREASES FOR DROP PARTICIPANTS (1) This rule applies to participants eligible for the guaranteed annual benefit adjustment (GABA) under 19-9-1009, 19-9-1010, or 19-9-1013, MCA.

(2) A participant will be eligible for subsequent GABA increases after participating in the DROP for at least 12 months. The first GABA increase will begin the following January. The GABA will be applied to the participant's monthly DROP accrual.

(3) Participants who continue employment after the DROP period will not receive GABA increases during the period of post-DROP employment.

(4) After termination of employment, GABA increases will be applied to the participant's retirement benefits, but not to the DROP benefit. The participant will receive GABA increases after receiving monthly DROP accruals or retirement benefits for a combined total of at least 12 months. The GABA increase will begin the following January. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1205, 19-9-1207, 19-9-1208, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

2.43.1119 MINIMUM BENEFIT FOR DROP PARTICIPANTS (1) This rule applies to participants eligible for the minimum benefit adjustment under 19-9-1007, MCA.

(2) The monthly DROP accrual paid during the DROP period may not be less than the minimum benefit.

(3) Participants who continue employment after the DROP period may not receive minimum benefit increases during the period of post-DROP employment.

(4) The total retirement benefit paid to a participant after termination may not be less than the minimum benefit. (History: 19-2-403, 19-9-1203, MCA; IMP, 19-9-1205, 19-9-1207, 19-9-1208, MCA; NEW, 2002 MAR p. 1891, Eff. 7/12/02.)

Sub-Chapters 12 through 16 reserved

Sub-Chapter 17

Family Law Orders

2.43.1701 FAMILY LAW ORDERS -- GENERAL REQUIREMENTS

(1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.

(2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303.

(3) An account cannot be established for an alternate payee in a retirement system or plan.

(4) A FLO may not force a member to:

(a) terminate employment;

(b) apply for retirement; or

(c) belong to a specific retirement system or plan.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the MPERA and board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, the MPERA will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant's full benefit. The MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the MPERA will proceed with consideration, approval and implementation procedures.

(6) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a FLO. If a proposed FLO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(7) The administrative cost, if any, of a FLO will be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the cost. Amounts owing may be offset against payments to be received by the appropriate party.

(8) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form required by the MPERA.

(9) An alternate payee must promptly inform the MPERA of any change of name or address. (History: 19-2-403, 19-2-907, MCA; IMP, 19-2-907, MCA; NEW, 2002 MAR p. 2182, Eff. 8/16/02.)

2.43.1702 FAMILY LAW ORDERS FOR THE PERS DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the PERS defined contribution retirement plan.

(2) A "participant" may be a member or a "primary" or "contingent beneficiary."

(3) Disability benefits under the defined contribution plan may not be divided by a FLO.

(4) In the PERS defined contribution retirement plan, the payments to an alternate payee are allowed as follows:

(a) The FLO must state the amount or the proportion, or it must describe the method for calculating the amount or proportion.

(b) If the participant receives lump sum payments in addition to periodic payments, the FLO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(c) The fixed amount, the designated monthly dollar amount, the designated number of months and the proportion may not be changed by future conditions or events.

(d) Payments will end when:

(i) payments to the participant end;

(ii) the fixed amount is paid; or

(iii) the account is depleted. (History: 19-2-403, 19-2-907, MCA; IMP, 19-2-907, MCA; NEW, 2002 MAR p. 2182, Eff. 8/16/02.)

2.43.1703 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the defined contribution retirement plan.

(2) A participant or alternate payee must submit a certified copy of a family law order (FLO) to the MPERA for board approval. The board has delegated authority for approval to the executive director.

(3) The MPERA will notify the participant and the alternate payee when it receives a certified copy of a FLO. The notice will explain the procedures for determining if the FLO can be approved.

(4) While reviewing the FLO, the board may take steps to safeguard the alternate payee's rights. The steps the board may take include, but are not limited to, the following:

(a) prevent payments from the participant's account, but allow the participant to manage the investments;

(b) segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the FLO is approved;

(c) pay the non-segregated amounts, with any earnings thereon, to the participant if the FLO is not approved within 18 months of the date it was received by MPERA and the participant is entitled to distribution of the account; and

(d) apply the FLO prospectively if approved more than 18 months after the date it was first received by MPERA.

(5) The board will notify the participant and the alternate payee once the FLO is approved. (History: 19-2-403, 19-2-907, MCA; IMP, 19-2-907, MCA; NEW, 2002 MAR p. 2653, Eff. 9/27/02.)

2.43.1704 FAMILY LAW ORDERS -- CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS (1) Pursuant to this rule and ARM 2.43.1705, the board will accept and apply family law orders (FLOs) in the public employees' defined benefit retirement plan, and the judges', sheriffs', game wardens' and peace officers', highway patrol officers', municipal police officers', and firefighters' unified retirement systems.

(2) Specific designations of a participant(s) in a FLO may include:

(a) for all systems and plans listed in (1), an individual "member" (active, inactive or retired);

(b) for the public employees' defined benefit retirement plan, or the judges', sheriffs', and game wardens' and peace officers' retirement systems, "primary" and "contingent beneficiaries" eligible to receive a lump sum payment and "contingent annuitants"; and

(c) for the highway patrol officers', municipal police officers', and firefighters' unified retirement systems, "survivors" and "designated beneficiaries" who are eligible to receive lump sum payments.

(3) A FLO may specify a future effective date provided:

(a) a FLO may not be effective any earlier than the date the FLO is received by MPERA;

(b) if the participant is a benefit recipient, the first monthly benefit payment that may be divided is the first benefit payment following the month MPERA receives the FLO; and

(c) a FLO may not provide for payments to an alternate payee prior to the date on which the participant first receives a payment from the retirement system or plan.

(4) Unless otherwise specified in the FLO, payments to an alternate payee will continue only while the participant is receiving payments. The FLO may further limit payments to:

(a) the life of the participant whose payment rights are being transferred;

(b) a specified maximum time;

(c) the life of the alternate payee; or

(d) the life of a designated participant.

(5) The two basic types of payments allowed to alternate payees are:

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid until the alternate payee receives the specific total dollar amount. If the defined sum cannot be divided evenly by the number of payments or monthly amount, any odd amount will be paid in the first payment. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events. Payments will cease when the defined sum is paid or when payments from the account end.

(b) A FLO may order "proportionate payments" by designating either a fixed percentage or a formula describing how to calculate the percentage. The fixed percentage must be expressed as a specific percentage or as a fraction for which the numerator and denominator are indicated. A formula calculating a fixed percentage may use months, years, or dollar amounts to establish a proportionate benefit. (History: 19-2-403 and 19-2-907, MCA; IMP, 19-2-907, MCA; NEW, 1993 MAR p. 2400, Eff. 10/15/93; AMD, 2002 MAR p. 2182, Eff. 8/16/02; TRANS, from ARM 2.43.615, Eff. 9/30/02.)

2.43.1705 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS (1) A participant or alternate payee must submit a certified copy of a family law order (FLO) to the MPERA for board approval. The board has delegated authority for approval to the executive director of MPERA.

(2) All FLOs must be applied prospectively and may only allocate future payments. However, a FLO may include procedures for collecting retroactive amounts from future payments.

(3) For purposes of allocating a lump sum payment, the FLO must be received before the payment is mailed or otherwise conveyed to the participant.

(4) If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment or may roll the payment over to another eligible plan. Within 60 days of the date of notification, the alternate payee must inform MPERA of his or her choice and if necessary, provide any information for a rollover to MPERA. Otherwise a direct payment will be made to the alternate payee after 60 days.

(5) Beginning on the effective date, payments to the participant, if any, will be adjusted as directed in the FLO and payments to the alternate payee(s), if any, will be retained by the MPERA. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.

(6) The board's decision to approve or not approve a FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the MPERA sends notice of the decision. If an administrative hearing is properly requested, the board must make the final administrative decision after receiving the hearing examiner's proposed decision. (History: 19-2-403, 19-2-907, MCA; IMP, 19-2-907, MCA; NEW, 1993 MAR p. 2400, Eff. 10/15/93; AMD, 2002 MAR p. 2182, Eff. 8/16/02; TRANS, from ARM 2.43.616, Eff. 9/30/02.)

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Sub-Chapter 18

Deferred Compensation Plan

2.43.1801 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board hereby adopts and incorporates by reference the state of Montana public employee deferred compensation plan document and trust agreement (January 1, 2002 edition), that was approved by the board on February 22, 2001 and September 28, 2001.

(2) Copies of the deferred compensation plan document, trust agreement and related materials may be obtained from the MPERA, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@state.mt.us. (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 1893, Eff. 7/12/02.)

2.43.1802 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the state of Montana 457 plan (deferred compensation) investment policy statement approved by the board on February 26, 2004.

(2) The board adopts and incorporates by reference the state of Montana 457 plan full discretion guidelines for the stable value investment option approved by the board on February 22, 2001.

(3) Copies of the 457 plan investment policy statement and full discretion guidelines may be obtained from the MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@state.mt.us. (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 1893, Eff. 7/12/02; AMD, 2004 MAR p. 1132, Eff. 5/7/04.)

2.43.1803 DEFERRED COMPENSATION PLAN INVESTMENT OPTIONS

(1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the deferred compensation plan. In doing so, the board will consider recommendations of the statutorily established employee investment advisory council and criteria established in the plan's investment policy statement.

(2) A deferred compensation plan participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to the stable value fund.

(3) No notice will be provided if the board replaces or changes the stable value investment option manager. The stable value investment option assets will automatically transfer to the new manager(s). (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 1893, Eff. 7/12/02; AMD, 2004 MAR p. 1132, Eff. 5/7/04.)

Rules 2.43.1804 through 2.43.1809 reserved

2.43.1810 QUALIFIED DOMESTIC RELATIONS ORDERS -- GENERAL REQUIREMENTS (1) The board will accept and implement qualified domestic relations orders (QDROs) in the deferred compensation (457) plan sponsored by the state of Montana.

(2) Upon request, MPERA will provide to the public a checklist of required and optional provisions for QDROs.

(3) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303. (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 2185, Eff. 8/16/02.)

2.43.1811 QUALIFIED DOMESTIC RELATIONS ORDERS -- CONTENTS

(1) A qualified domestic relations order (QDRO) must contain the following information:

(a) the name, last known mailing address, date of birth and social security number of the participant;

(b) the name, last known mailing address, date of birth and social security number of the alternate payee;

(c) the amount or percentage of the participant's account, distribution, or payments to be paid by the deferred compensation (457) plan to the alternate payee, or a description of how to calculate the amount or percentage;

(d) the number of payments or the period of time to which the order applies if the participant is receiving periodic or annuity payments; and

(e) if the participant receives lump sum payments in addition to periodic payments, the QDRO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(2) A QDRO must meet the following requirements:

(a) a QDRO must create or recognize the right of an alternate payee to all or a portion of a participant's account;

(b) a QDRO must relate to Title 40, MCA marital property rights, alimony, or child or other dependent support;

(c) the specified distribution or payment must be of a type or form permitted under the deferred compensation (457) plan;

(d) the specified amount or duration of the payment to the alternate payee may not be greater than that available to the participant under the deferred compensation (457) plan;

(e) the alternate payee may not be granted payment of any benefits that have already been awarded to another alternate payee under another order previously determined to be a QDRO; and

(f) the QDRO must contain a statement that the QDRO is subject to review and approval by the board. (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 2185, Eff. 8/16/02.)

2.43.1812 QUALIFIED DOMESTIC RELATIONS ORDERS -- APPROVAL AND IMPLEMENTATION (1) A participant or alternate payee must submit a certified copy of a domestic relations order (DRO) to the MPERA for board approval. The board may delegate authority for approval to the executive director.

(2) The MPERA will notify the participant and the alternate payee when it receives a certified copy of a DRO. The notice will explain the procedures for determining if the DRO is qualified.

(3) While reviewing the DRO, the board may take steps to safeguard the alternate payee's rights. The steps the board may take include, but are not limited to, the following:

(a) prevent payments from the participant's account, but allow the participant to manage the investments;

(b) segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the DRO is qualified;

(c) pay the non-segregated amounts, with any earnings thereon, to the participant if the DRO is not qualified within 18 months of the date it was received by MPERA and the participant is entitled to distribution of the account; and

(d) apply the DRO prospectively if approved more than 18 months after the date it was first received by MPERA.

(4) Any fees required by a third party administrator or record keeper for segregated accounts will be charged against the participant's account unless the qualified domestic relations order (QDRO) states the fee should be deducted from amounts paid to the alternate payee.

(5) The information and requirements identified in ARM 2.43.1811 are considered the minimum the board needs to administer a QDRO. Domestic relations orders that do not contain the minimum information or address the minimum requirements are not QDROs and will be rejected by the board as not qualified. Rejected orders will be returned to the appropriate party with information on how to have the DRO qualified.

(6) Once the DRO is qualified, the board will notify the participant and the alternate payee that the DRO is being implemented as a QDRO.

(7) The alternate payee may receive their payment only as a direct payment, a rollover, or a transfer.

(8) If the alternate payee is already a participant or is eligible to participate in the state's deferred compensation (457) plan, the alternate payee's payments may be made to the alternate payee's plan account. However, if the alternate payee is not eligible to participate in the state's deferred compensation (457) plan, a plan account cannot be established for the alternate payee.

(9) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the MPERA and board will suspend further consideration or implementation of a DRO. Unless otherwise directed by court order, the MPERA will not distribute the participant's 457 account pending resolution of the stay. The MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the MPERA will proceed with consideration, approval and implementation procedures.

(10) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a QDRO. If a DRO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(11) The board will not charge a fee for approving or implementing a QDRO. However, the board may charge a reasonable fee if a participant, an alternate payee or any of their attorneys make excessive demands of MPERA staff to provide assistance in drafting a DRO which can be qualified. (History: 19-50-102, MCA; IMP, 19-50-102, MCA; NEW, 2002 MAR p. 2185, Eff. 8/16/02.)